

Exhibit A
Center Property Map

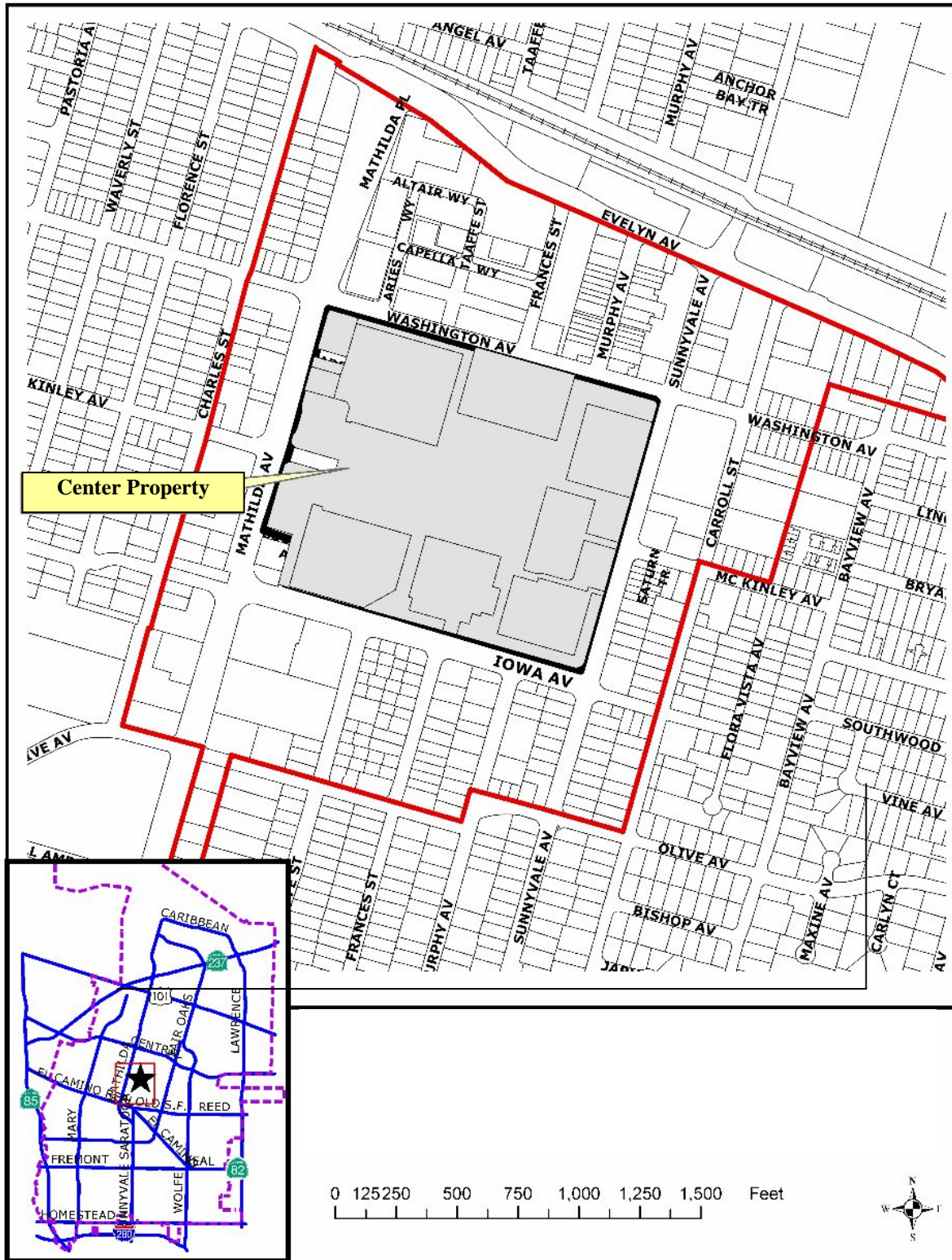


Exhibit B
Current Subdivision Map

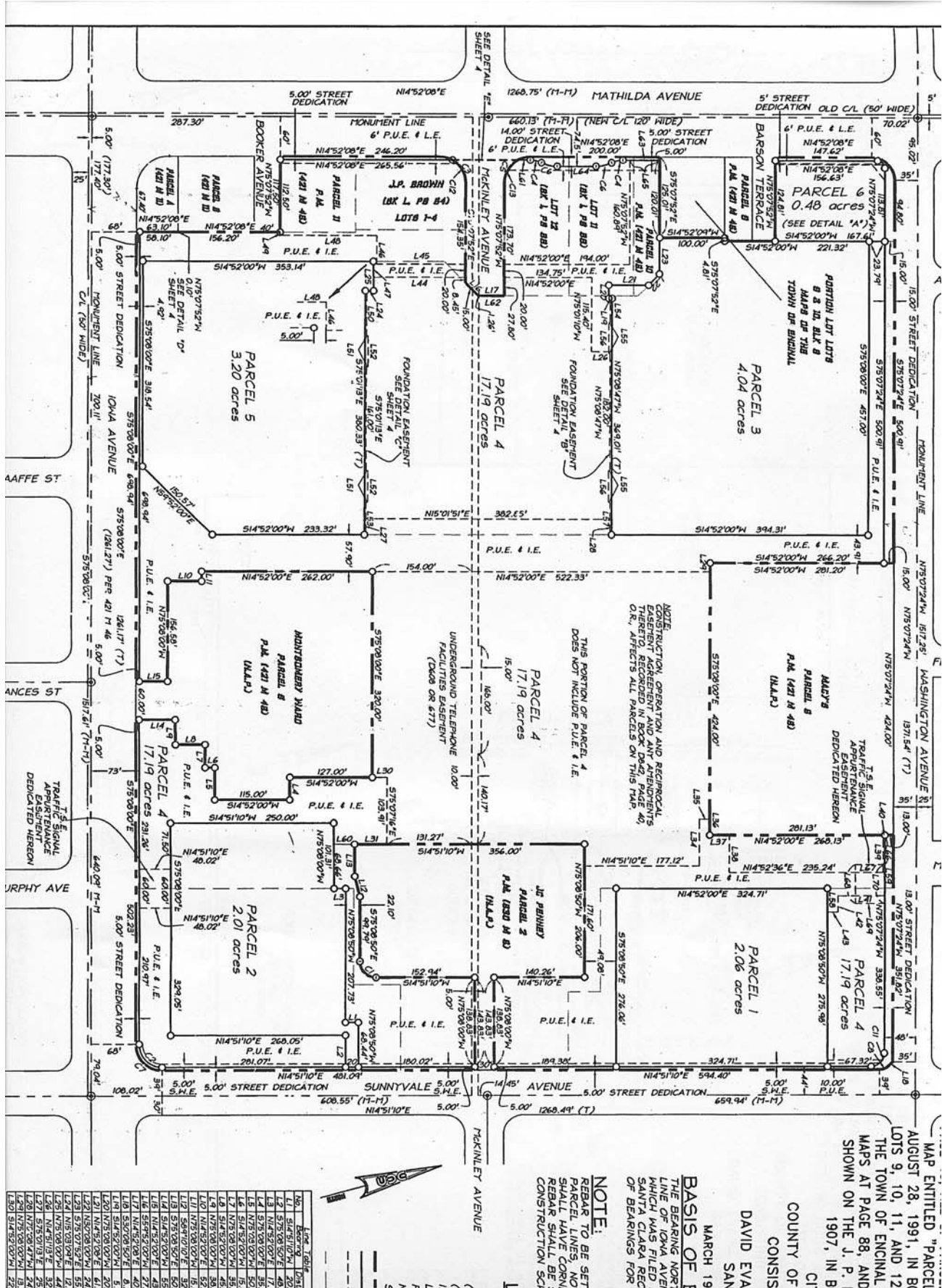
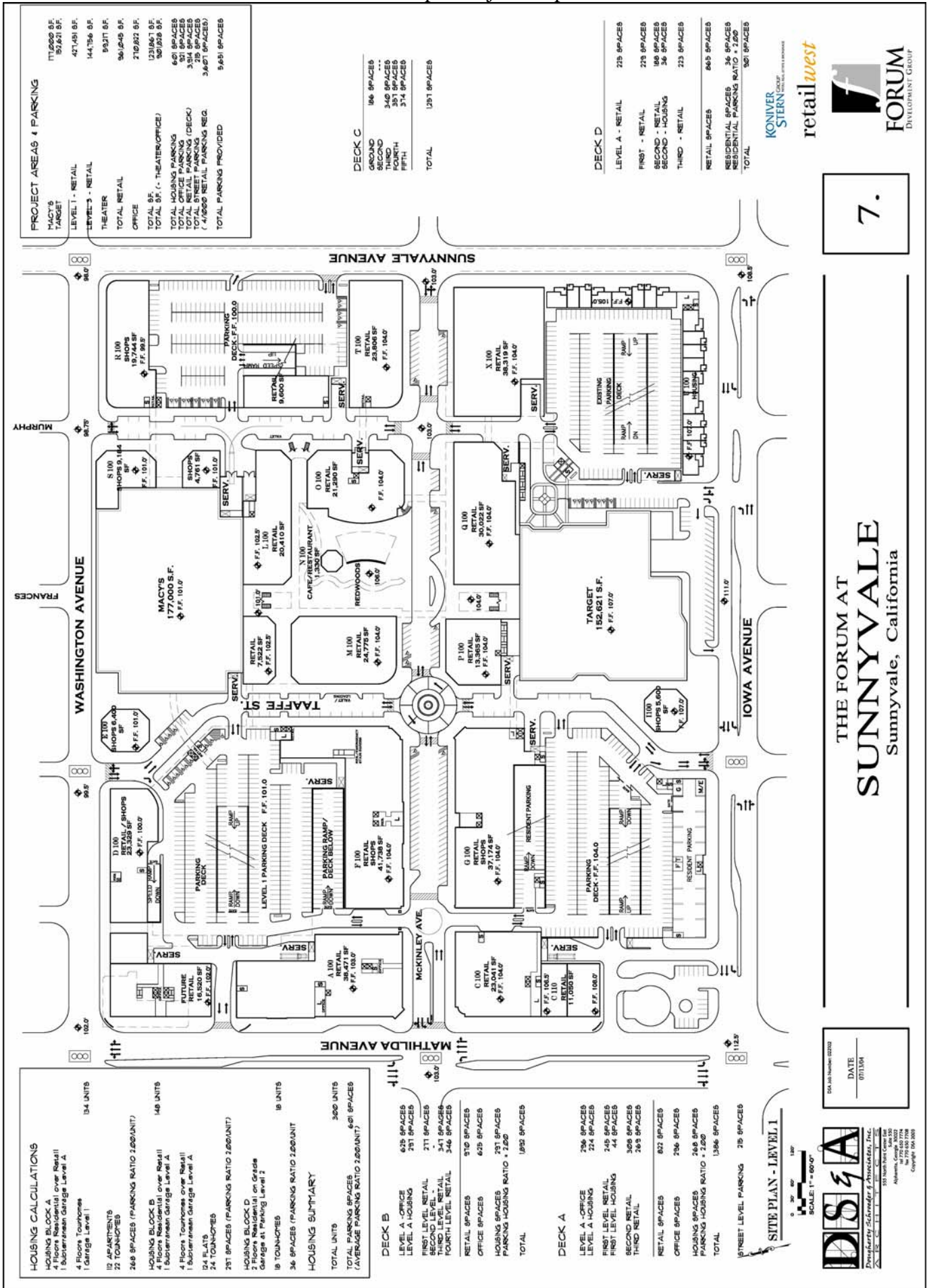
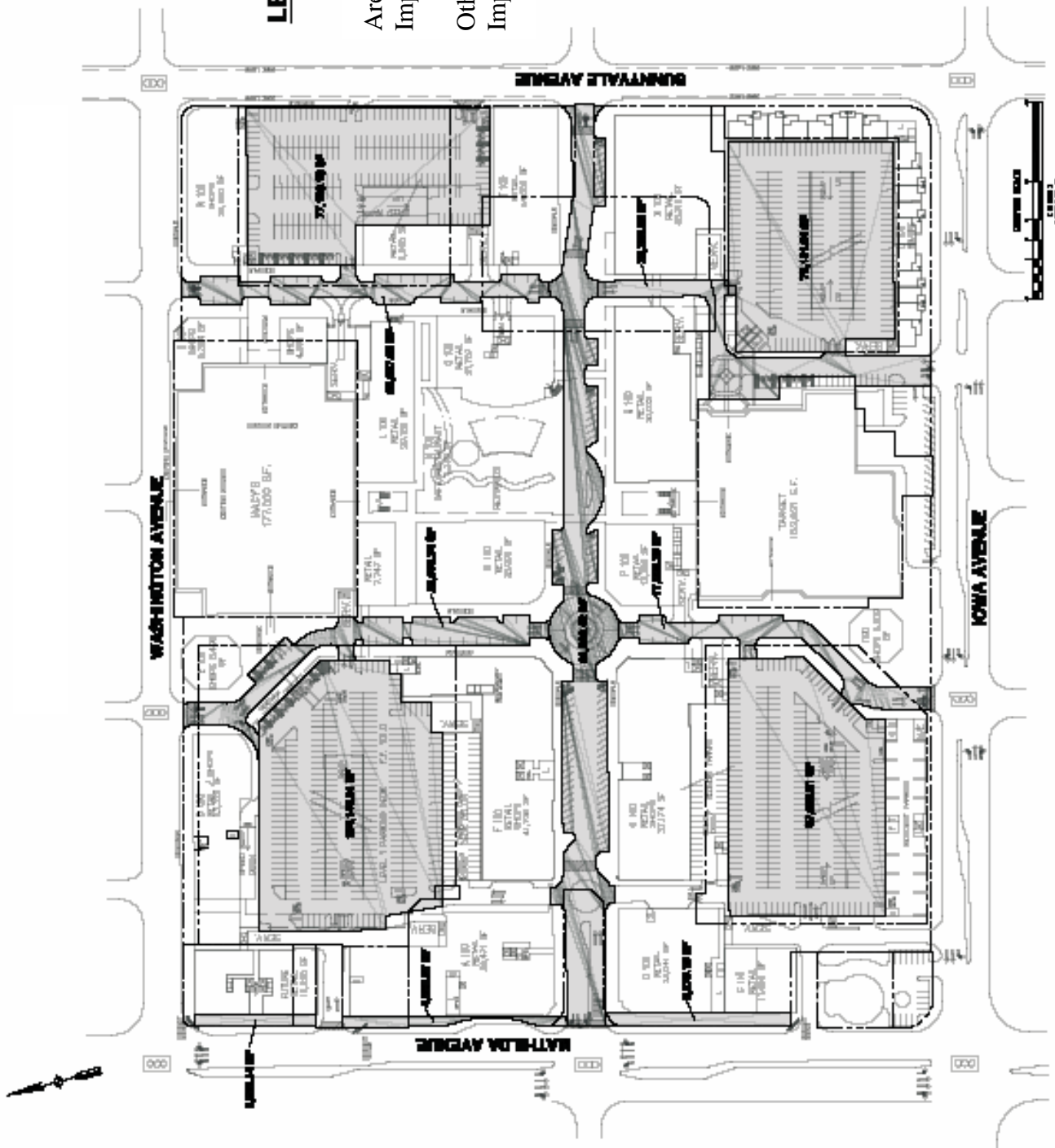


Exhibit C Developer Project Proposal



Areas Of Public Improvements

Other Areas Private Improvements



[illegible]

PROPOSED PUBLIC OWNERSHIP LAND

526,059.87 SF
(12.08 AC)

TARGET

103,074.96 SF
(2.37 AC)

MACY'S

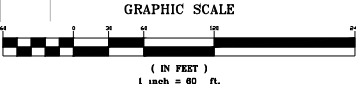
110,277.15 SF
(2.53 AC)

**FOURTH QUARTER
PROPERTIES
XLVIII, LLC**

856,889.48 SF
(19.67 AC)

TOTAL

1,596,301.46 SF
(36.65 AC)



Date: 08/13/04	No.	Revisions
Scale: 1"=60'		
Design: ATN		
Drawn: ATN		
Approved: JBP		
Job No: 04602		

Drawing Number: **EX. 2**
2 OF **3**

Exhibit F – Not Yet Available

Exhibit G

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Sunnyvale Redevelopment Agency
456 West Olive Avenue
Sunnyvale, California 940881
Attention: Executive Director

No fee for recording pursuant to
Government Code Section 27383

GRANT DEED

THE SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic, herein called "Grantor", acting to carry out a redevelopment plan under the Community Redevelopment Law of California, hereby grants to Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company, herein called "Grantee", the real property situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto (the "Property"). Capitalized terms used herein shall have the same meaning as in the Agreement, as defined below.

SUBJECT, however, to easements of record, the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project adopted by Ordinance No. 1796-75 of the City Council of the City of Sunnyvale on November 26, 19754, hereinafter called the "Plan", and is incorporated and made a part of this Grant Deed with the same force and effect as though set forth in full herein, and the Owner Participation and Disposition and Development Agreement by and between Grantor and Grantee, dated as of _____ 2004, hereinafter referred to as the "Agreement", which Agreement is incorporated and made a part of this Grant Deed with the same force and effect as though set forth in full herein, and the certain conditions, covenants and restrictions as follows:

Section 1. Mandatory Language in All Subsequent Deeds and Leases.

The Grantee covenants and agrees, for itself and its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the

Exhibit G

selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property and the Improvements thereon.

All deeds, leases or contracts made relative to the Property and the Improvements thereon or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

- (a) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
- (b) In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through the Grantee, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee, or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the land herein leased."
- (c) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through the transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the land."

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Section 2. Enforcement.

The covenants contained in section 1 of this Grant Deed shall, without regard to technical classification or designation, legal or otherwise specifically provided in this Grant Deed, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the grantor, its successor and assigns, and any successor in interest to the property and improvements or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants in section 1 shall remain in effect in perpetuity.

Section 3. Counterparts.

This Grant Deed may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Grant Deed.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed this ____ day of ____, 200__.

GRANTOR:

SUNNYVALE REDEVELOPMENT
AGENCY, a public body corporate and politic

By: _____
Name: _____
Title: _____

GRANTEE:

FOURTH QUARTER PROPERTIES XLVII, LLC, a
Georgia limited liability company

By: _____
Name: _____
Title: _____

Exhibit G

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit H

PUBLIC STREET MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 2004 (the "Effective Date"), by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and FOURTH QUARTER PROPERTIES XLVIII, LLC, a Georgia limited liability company (the "Operator").

W I T N E S S E T H:

WHEREAS, the Operator and the Agency have entered into that certain Owner Participation and Disposition and Development Agreement dated as of _____, 2004 (the "DDA"), pursuant to which the Operator shall construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, the Operator, the Agency, Sun Town Center Properties, a California corporation, and Target Corporation, a Minnesota corporation, have entered into the Operation and Reciprocal Easement Agreement dated _____, _____, which sets forth certain standards regarding the operation and maintenance of the Development (the "OREA").

WHEREAS, a certain portion of the Development that includes the public streets and the public sidewalks on the exterior of the Development is owned by the Agency and is more particularly described in Exhibit A attached hereto (the "Public Street Parcel").

WHEREAS, the Operator and the Agency have agreed that the Operator shall be responsible for the operation and maintenance of the Public Street Parcel pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Public Street Parcel. This Agreement shall affect the Public Street Parcel.

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate ninety-nine (99) years thereafter, unless earlier terminated pursuant to the terms of this Agreement. Notwithstanding the foregoing, the Term shall terminate upon the termination of the OREA.

Section 3. Use.

Exhibit H

a. Permitted Uses. The Public Street Parcel consists of public streets and public sidewalks (the "Improvements"). The streets and sidewalks located on the Public Street Parcel shall be used in a manner that is consistent with the laws and ordinances governing the use of public streets and sidewalks in the City of Sunnyvale (the "City").

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Public Street Parcel, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Public Street Parcel, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Public Street Parcel that Operator is required to maintain pursuant to Section 11.

(ii) The Operator agrees not to knowingly use the Public Street Parcel or permit anything to be done in or about the Public Street Parcel which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Public Street Parcel, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Public Street Parcel, or not related to or affected by Operator's improvements or acts.

c. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Public Street Parcel including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Public Street Parcel in violation of any Hazardous Material Laws.

Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Public Street Parcel. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Public Street Parcel results in (a) contamination of the Public Street Parcel, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Public Street Parcel or any other property or

Exhibit H

injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Agency (which approval may be given or withheld in Agency's reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, Hazardous Materials means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time; any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 (j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §§ 135 et seq.; the Atomic Energy Act of 1954, 42 USC §§ 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 USC §§ 10101 et seq., California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 13000 et seq.); California Health and Safety Code §§ 25300 et seq. and their associated regulations at such time; and any additional wastes, substances or materials that at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Public Street Parcel.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Public Street Parcel, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Public Street Parcel or any portion thereof.

Exhibit H

d. No Charge for Use. Operator shall not impose or permit the imposition of any charge for the use of the Public Street Parcel and Improvements without Agency's consent. In no event shall Operator be entitled to any compensation or reimbursement from the Agency for the services Operator performs and the obligations Developer incurs under this Agreement. If the Agency permits the imposition of a charge, the proceeds thereof shall be used for actual and direct expenses for operating the Improvements and paid to unrelated third parties.

Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Public Street Parcel or the Improvements or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify Agency whether taxes have been paid.

Section 5. Repair, Maintenance and Operation. The Operator shall at its own expense, operate, repair, and maintain, during the Term of this Agreement, the Public Street Parcel in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same. Such costs and expenses shall include, but not be limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever. Neither the City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Public Street Parcel during the Term of this Agreement. The standards of operation and maintenance of the Public Street Parcel required under this Agreement shall include those operation and maintenance requirements applying to the Public Street Parcel in the OREA and the standards of the City applicable to other public streets and sidewalks. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Public Street Parcel are met to the extent that they apply to the Public Street Parcel. In the event the Operator fails to perform the management, maintenance, repair and operation of the Public Street Parcel as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the OREA are met, the Agency shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be

Exhibit H

unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Agency shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the OREA. In such event, the Operator shall promptly upon demand reimburse the Agency for all reasonable costs and expenses incurred by the Agency for such management, maintenance, repair and operational activities.

Section 6. Policing.

Operator shall provide adequate security and traffic control for the Public Street Parcel and the Improvements as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Public Street Parcels and is consistent with the OREA. The Operator and Agency do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol or traffic control. In providing for security and traffic control, Operator shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person.

Section 7. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Public Street Parcel.

Section 8. Improvements.

a. Existing Improvements. In accordance with the DDA, the Operator shall demolish, reconstruct, repair or replace any existing improvements on the Public Street Parcel.

b. By the Operator. In accordance with the DDA, the Operator shall construct the Improvements. Upon the completion of the Improvements, the Operator may, upon written approval from the Agency, at the Operator's expense, make any addition to or improvements to the Public Street Parcel or Improvements which are consistent with the DDA and the OREA and do not impair the utility thereof for use as public streets or sidewalks. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies.

c. By the Agency. The Agency shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Public Street Parcel which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Public Street Parcel.

Exhibit H

d. Ownership of Improvements. All Improvements constructed on the Public Street Parcel by Operator shall be owned by the Agency. Any additions or alterations to the Improvements shall automatically become part of the Improvements.

Section 9. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Public Street Parcel consistent with the provisions of this Agreement and the OREA and the standards of the City applicable to other public streets and sidewalks as may be necessary and approved by the Agency. Such policies, rules and regulations must be approved by the Agency which approval shall not be unreasonably withheld.

Section 10. Easements for Construction and Utilities. Agency grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Public Street Parcel, rights of way or easements on or over the Public Street Parcel for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 11. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

(i) Workers' Compensation Insurance, in accordance with the law;

(ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Public Street Parcel or as a result of business or activity at the Public Street Parcel; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.

(iii) Property Insurance insuring the Public Street Parcel against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be reasonably acceptable to the Agency.

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(iv) Any other insurance required by the OREA or reasonably requested the Agency.

(v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency and City.

(vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.

(vii) Operator may use insurance proceeds to fulfill its obligations under Section 12; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency.

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 11, Agency may, at its option, purchase insurance coverage to protect the Agency and the Public Street Parcel and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Public Street Parcel and the building and other improvements in or to the Public Street Parcel that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

Section 12. Damage to the Public Street Parcel.

a. Damage or Destruction of Improvements. In the event that the Improvements are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Improvements.

Exhibit H

b. Damage Near End of Term. Unless the OREA provides otherwise, if at any time during the last six (6) years of the Term there is damage or destruction to the Improvements and the cost to repair such damage makes any repair and restoration economically infeasible as reasonably determined by Operator, Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage.

Section 13. Assignment of Agreement.

Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the Public Street Parcel by any persons other than Operator and its employees; and (iii) any changes of ownership in the Operator, including any transfer of fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign its rights under this Agreement to (i) a lender as security in accordance with Section 2, and (ii) to an entity that is purchasing all or a substantial portion of the retail improvements on the parcels adjacent to the Public Parcel, if such assignment is permitted under the DDA or approved by the Agency.

Section 14. Eminent Domain. If all or part of the Public Street Parcel shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap or impede use of the Public Street Parcel. In accordance with this agreement, no award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Public Street Parcel and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 15. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Public Street Parcel and Improvements in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for

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reasonable wear and tear, and except for any damage to the Public Street Parcel and Improvements caused by casualty or by a taking as a result of eminent domain proceedings.

Section 16. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Public Street Parcel free and clear of all mechanics' and materialmen's liens in connection therewith. The Agency shall have the right to post or keep posted on the Public Street Parcel, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Public Street Parcel by Operator. If any such lien is filed, the Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be necessary to remove such lien. Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of the amount expended.

Section 17. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 18. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency

Sunnyvale Redevelopment Agency
456 West Olive Avenue
P.O. Box 3707
Sunnyvale, California 94088-3707
Attention: Executive Director
Telephone: (408) 730-9480
Facsimile: (408) 730-7699

Operator

Fourth Quarter Properties XLVIII, LLC
1300 Parkwood Circle, Suite 430
Atlanta, Georgia 30339
Attn: Bill Brown
Telephone: (770) 801-9886
Facsimile: (770) 801-8898

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 19. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

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Section 20. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Operator, or (b) the Operator shall abandon or vacate the Public Street Parcel, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the Agency shall have the right, at its option, without any further demand or notice:

(i) to terminate this Agreement and to re-enter the Public Street Parcel and eject all parties in possession therefrom, in which case this Agreement shall terminate, and the Operator shall have no further rights or claims hereunder; or

(ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the Agency terminates this Agreement as hereinabove provided, the Agency shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the Agency are in addition to and not exclusive of any other remedy of the Agency.

Upon terminating, the Operator shall not hinder the Agency or its designee in taking over the operation of the Public Street Parcel and Improvements.

Section 21. Financing.

a. Operator shall have the right at any time and from time to time to assign this Agreement to the holder of one or more mortgages required for any reasonable and customary method of construction or permanent financing of the improvements on property adjacent to the Public Street Parcel that is subject to the DDA without the Agency's consent, provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Agency except as provided in this Agreement.

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(ii) Operator shall give Agency prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

b. Agency shall give any lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice of default provided pursuant to Section 20 which cure period shall be coterminous with the one provided to Operator plus such additional time as is reasonably necessary to allow the lender to gain possession of the Operator's rights under this Agreement.

c. The documents evidencing the lender's loan to Operator shall provide that any proceeds from fire or extended coverage insurance for the Improvements shall be used for repair or rebuilding of the Improvements and not to repay part of the outstanding mortgage.

d. The documents evidencing lender's loan to Operator shall contain provisions that all notices of default under the note and mortgage must be sent to Agency and Operator and that Agency shall have the right to cure any default if Operator fails to do so. Agency shall have sixty (60) days in which to cure any default if Operator fails to do so. Neither Agency's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if Agency, or Operator promptly performs all other provisions of the note and mortgage.

e. On the recording of lender's deed of trust or deeds of trust, Operator shall at Operator's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Agency for a copy of all notices of default and all notices of sale under the deed of trust as provided under California Law. Inclusion in the body of lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

f. Lender shall not be liable to perform Operator's obligations under this Agreement until the lender acquires Operator's rights by foreclosure. After acquiring Operator's rights by foreclosure, lender shall be liable to perform Operator's obligations only until lender assigns or transfers the Agreement as permitted in Section 13. Lender shall not, however be required to cure Operator's defaults occurring before lender's acquisition of Operator's rights by foreclosure.

Section 22. No Release of Operator. Consent by Agency to any assignment by Operator shall not relieve Operator of any obligation to be performed by Operator under this Agreement, whether occurring before or after such consent or assignment, unless the Agency approves such assignment, and the assignee assumes in writing all obligations of the Operator under this Agreement and the DDA and Agency approves the form of the written assignment. The consent by Agency to any assignment shall not relieve Operator from the obligation to obtain Agency's express written consent to any other assignment except as herein provided. The acceptance of payment by Agency from any other person shall not be deemed to be a waiver by Agency of any provision of this Agreement or to be a consent to

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any assignment or other transfer. Consent to one assignment or other transfer shall not be deemed to constitute consent to any subsequent assignment or other transfer.

Section 23. Assignment by Agency. The Agency shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement and in the Public Street Parcel and in such event such transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Agency under this Agreement.

Section 24. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the leasing, subleasing, transferring, use, or enjoyment of the Public Street Parcel herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Public Street Parcel herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 25. Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Public Street Parcel or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Public Street Parcel or any part thereof during the Term of this Agreement except for the willful misconduct or the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency and the Public Street Parcel harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Public Street Parcel during the Term of this Agreement. The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the Public Street Parcel; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Street Parcel to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor

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or subcontractor of the Operator.

Section 26. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Public Street Parcel in any manner or for any purposes other than as herein set forth;
- b. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Public Street Parcel;
- c. Abandon the Public Street Parcel during the Term of this Agreement;
- d. Knowingly use or occupy, or knowingly permit the Public Street Parcel or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Public Street Parcel in any manner known to constitute or give rise to a nuisance of any kind;
- e. Make, authorize or permit any material modifications or alterations to the Public Street Parcel except as expressly authorized by this Agreement;
- f. Do anything inconsistent with, or that will cause a default under the OREA; or
- g. Enter into or amend any contract or agreement affecting the Public Street Parcel that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 27. Attorneys' Fees and Court Costs. In the event that either the Agency or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 28. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the Agency and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Operator.

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Section 29. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 31. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Public Street Parcel, and (ii) shall not make Operator an agent for the City or Agency.

Section 32. Estoppel Certificate. Within ten (10) days after delivery of a written request from the Agency to the Operator, the Operator shall execute and deliver to the Agency an estoppel certificate certifying as to such facts with regard to this Agreement and the Public Street Parcel as the Agency may reasonably request from time to time.

Section 33. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the OREA, the terms of this Agreement shall prevail.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE SUNNYVALE REDEVELOPMENT AGENCY

By: _____
Name: _____
Its: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

FOURTH QUARTER PROPERTIES XLVIII

By: _____
Name: _____
Its: _____

Exhibit I

PUBLIC PARKING CONSTRUCTION LEASE
(Sunnyvale Town Center)

This Public Parking Construction Lease (the "Lease") is entered into as of the ____ day of _____, 2004, by and between the Sunnyvale Redevelopment Agency, a public agency corporate and politic (the "Landlord") and Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company (the "Tenant").

In consideration for the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following-described Property, upon the following terms and conditions:

ARTICLE 1. FUNDAMENTAL LEASE PROVISIONS

(a) Property: That certain real property located in the City of Sunnyvale, California more particularly described in the attached Exhibit A (the "Property").

(b) Term: Beginning on the Effective Date, and ending at 11:59 P.M. on the day preceding the tenth (10th) anniversary of the Effective Date; provided, however, if the City purchases the Improvements as contemplated by the DDA, this Lease shall terminate upon the completion of that purchase.

(c) Rent: Tenant shall pay to Landlord One Dollar (\$1.00) per year for each Lease Year of the Term, so long as the Term is still in effect when the applicable payment is due.

(d) Use. Tenant shall use the Property in accordance with this Lease and the DDA for the construction and operation of public parking, and for incidental purposes related thereto. Tenant shall not use the Property in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body.

(e) Landlord Address:

The Sunnyvale Redevelopment Agency
456 W. Olive Avenue
P.O. Box 3707
Sunnyvale, California 94088
Attn: Executive Director
Telephone: 408-730-7480
Facsimile: 408-730-7699

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(f) Tenant Address:

Fourth Quarter Properties XLVIII, LLC
1300 Parkwood Circle, Suite 430
Atlanta, Georgia 30339
Attn: Bill Brown
Telephone: (770) 801-9886
Facsimile: (770) 801-8898

Section 1.2 Public Entity Tenant Authorization. Entry into this Lease was approved in conjunction with approval of the DDA (as defined below).

ARTICLE 2. DEFINITIONS AND EXHIBITS

Section 2.1 Definitions. The capitalized terms set forth in this Section 2.1 shall, for the purposes of this Lease, have the meaning set forth below as follows:

- (a) "City" shall mean the City of Sunnyvale.
- (b) "DDA" means the Owner Participation and Disposition and Development Agreement by and between Landlord and Tenant dated as of _____ 2004.
- (c) "Effective Date" means the date Tenant and Landlord execute this Lease.
- (d) "Existing Improvements" means the improvements existing on the Property that are to be demolished by Tenant in accordance with the DDA and this Lease.
- (e) "Hazardous Materials" means:
 - (i) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time;
 - (ii) any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 (j) of the California Health and Safety Code at such time;
 - (iii) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §§ 135 et seq.; the Atomic Energy Act of 1954, 42 USC §§ 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 USC §§ 10101 et seq., California Health and Safety Code (Section 25100 et seq.,

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Section 3900 et seq.), or California Water Code (Section 13000 et seq.); California Health and Safety Code §§ 25300 et seq. and their associated regulations at such time; and

(iv) any additional wastes, substances or materials that at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(f) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

(g) "Improvements" shall mean the parking structures, related utilities, landscaping and such other improvements that Tenant may construct on the Property in accordance with the DDA and this Lease.

(h) "Landlord" means the Sunnyvale Redevelopment Agency.

(i) "Lease" means this Public Parking Construction Lease, including the attached Exhibits and all subsequent amendments to this Lease.

(j) "Lease Year" shall mean a period of one calendar year beginning on the Effective Date of this Lease.

(k) "Lender" means any lender providing financing to the Tenant related to the Property.

(l) "OREA" means the Operation and Reciprocal Easement Agreement by and between Sun Town Center Properties, a California Corporation, Target Corporation, a Minnesota Corporation, the Landlord, and Tenant, dated _____.

(m) "Property" means the real property located in the City of Sunnyvale, California as more particularly described on the attached Exhibit A.

(n) "Rent" shall mean the payments required by Section 4.1.

(o) "Tenant" means Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company.

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(p) "Term" shall mean the term of this Lease as set forth in Article 1 above.

Section 2.2 Exhibits. The following exhibits are attached to and incorporated by reference in this Lease:

Exhibit A: Legal Description of the Property.

ARTICLE 3. PROPERTY AND TERM

Section 3.1 Lease of Property. The Landlord hereby leases to the Tenant, and the Tenant leases from the Landlord, the Property on and subject to all of the terms and conditions set forth in this Lease.

Section 3.2 Identification of Property. As of the date of this Lease, the Property is that certain Property located in the City of Sunnyvale, California more particularly described in the attached Exhibit A.

Section 3.3 Possession and Condition of Property. The Property shall be delivered to Tenant in accordance with the DDA and upon the Effective Date. Landlord is leasing the Property to the Tenant in its "as is" condition and makes no warranty or representation as to the suitability of the Property for the uses to which Tenant intends for the Property. Subject to the terms and conditions of the DDA, Tenant shall be responsible for and shall bear all costs of demolition, construction, reconstruction, rehabilitation, site preparation, correction of any soils, subsurface or structural conditions on those (including but not limited to removal, remediation, monitoring, or mitigation of any Hazardous Materials) and for otherwise putting parcels in a condition suitable for use, construction, development and operation of parking structures.

Section 3.4 Existing Improvements. Any Existing Improvements existing on the Property on the Effective Date shall become Tenant's property; provided, however, that Tenant shall demolish, remove, and otherwise dispose of the Existing Improvements in accordance with the DDA. Landlord shall receive no compensation for the improvements other than the performance of Tenant's covenants expressed in this Lease.

Section 3.5 Lease Term. The term (the "Term") of this Lease shall commence on the Effective Date and end as specified in subsection (b) of Article 1 above, unless terminated earlier pursuant to the terms of this Lease.

ARTICLE 4. RENT

Section 4.1 Payments Due. The Tenant shall pay to the Landlord One Dollar (\$1.00) per Lease Year commencing on the Effective Date.

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Section 4.2 Utilities. The rent shall not include utilities. Tenant shall pay for all water, gas, light, power, telephone services, sewer services and all other services supplied to the Property, including installation and connection of services.

ARTICLE 5. TAXES

Section 5.1 Payment of Taxes. To the extent that Landlord or Tenant is assessed real or personal property taxes, general and special assessments, or other charges against the Property or the Improvements, personal property thereon, a possessory interest therein, Tenant shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

Section 5.2 Prorations. All payments required pursuant to Section 5.1 shall be prorated on a daily basis, assuming a 365-day Lease Year, for the initial Lease Year and for the Lease Year in which the Lease terminates.

Section 5.3 Proof of Compliance. Tenant shall furnish to Landlord at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Tenant may comply with this requirement by retaining a tax service to notify Landlord whether taxes have been paid.

ARTICLE 6. USE OF THE PROPERTY AND CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Use of Property.

(a) Permitted Uses. The Tenant shall use the Property in accordance with the DDA for construction and operation of the Improvements to provide parking on a non-exclusive basis for members of the general public and incidental purposes related thereto.

(b) Prohibited Uses.

(i) The Tenant shall not do or permit to be done in, on or about the Property, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Property, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Property.

(ii) Tenant agrees not to knowingly use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Tenant agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire

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underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Property.

Section 6.2 Hazardous Materials. Tenant agrees that during the Term of this Lease, Tenant shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Property including, but not limited to, Hazardous Material Laws.

Tenant further agrees that during the Term of this Lease, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Property in violation of any Hazardous Material Laws.

Tenant shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Property. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials on, under or about the Property results in (a) contamination of the Property, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Property or any other property or injury or death to any persons, then Tenant agrees to respond in accordance with the following. Tenant agrees (a) to notify Landlord immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Landlord (which approval may be given or withheld in Landlord's reasonable discretion), Tenant shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Landlord and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this section shall survive termination or expiration of this Lease and shall continue thereafter.

Section 6.3 Zoning and Land Use Permits. Tenant shall apply for and receive all permits and approvals required to construct and operate the Improvements pursuant to local, state, and federal law, including but not limited any approvals required under City zoning ordinances, and the California Environmental Quality Act. If applicable, Tenant shall file applications for such permits and approvals in accordance with the DDA. Tenant shall bear all costs of such procedures and shall hold Landlord harmless from any claims arising from such procedures.

Section 6.4 Tenant to Construct Improvements. Tenant shall construct the Improvements in accordance with the DDA.

Section 6.5 Ownership of Improvements. All Improvements constructed on the Property by Tenant as permitted by this Lease and related fixtures shall be owned by Tenant.

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Section 6.6 Alterations, Additional Improvements. After completion of construction of the Improvements pursuant to the DDA, Tenant shall not make or allow to be made any alterations or physical additions of any kind in or to the Property (the "Alterations") without first obtaining the written consent of the Landlord. Such consent shall not be unreasonably withheld provided such Alterations are consistent with the provisions of this Lease. All Alterations shall be made at Tenant's sole cost and expense including the expense of complying with all legal requirements. All such work shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies. Any additions to or alterations or improvements of said Property shall become at once a part of the Improvements.

Section 6.7 Easements for Construction and Utilities. Landlord grants to Tenant the right to grant public entities or public service corporations, for the purpose of serving only the Property, rights of way or easements on or over the Property for poles or conduits or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term.

Section 6.8 No Charge for Parking. Tenant shall not impose or permit the imposition of any charge for the use of the Property and Improvements without Landlord's consent.

Section 6.9 Policies and Rules. Tenant shall establish and maintain such general policies, rules, and regulations for the repair, management, maintenance, operation and use of the property consistent with the provisions of this Lease and the OREA. Such policies, rules, and regulations must be approved by the Landlord which approval shall not be unreasonably withheld.

ARTICLE 7. REPAIRS, MAINTENANCE, LIENS

Section 7.1 Maintenance and Repairs by Tenant. Tenant shall at its own cost and expense, keep the Property and Improvements in good condition and repair and in accordance to this Lease, with the OREA and in a manner consistent with the practices prevailing in the operation of similar facilities including: removing all papers, debris, filth, graffiti and refuse waters and washing and/or thoroughly sweeping the same as, in Landlord's reasonable opinion, may be needed. Unless otherwise provided in Sections 8.4 and 8.5, Tenant shall at its own cost and expense repair or replace any damage, injury or deterioration to the Property or Improvements, or any part thereof. Once construction of the Improvements is complete, for the remaining years of the Term, Tenant shall provide as many parking spaces as required pursuant to the construction plans approved by Landlord in accordance with the DDA. In the event Tenant fails to perform the management, maintenance, repair and operation of the Property as provided herein, Landlord shall notify the Tenant in writing of such failure to perform, specifying the respects in which it considers the Tenant's performance to be unsatisfactory. Upon the failure of the Tenant to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Landlord shall collectively or

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individually have the right to enter the Property and undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner required of the Tenant through this Lease and the OREA. In such event, the Tenant shall reimburse the Landlord for all reasonable sums paid by Landlord under this Section within thirty (30) days after written notice is received from Landlord of amount expended.

Section 7.2 Liens. Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Tenant and shall keep the Property free and clear of all mechanics' and materialmen's liens in connection therewith. The Landlord shall have the right to post or keep posted on the Property, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Property. If any such lien is filed, the Landlord may, but shall not be required to, upon written notice to Tenant, take such action or pay such amount as may be necessary to remove such lien. Tenant shall reimburse Landlord for all reasonable sums paid by Landlord under this section within thirty (30) days after written notice is received from Landlord of the amount expended.

ARTICLE 8. INSURANCE, DAMAGE AND DESTRUCTION; CONDEMNATION

Section 8.1 Tenant's Requirements. Tenant shall, at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Landlord, insurance coverage by the following policies of insurance:

- (a) Workers' Compensation Insurance, in accordance with the law;
- (b) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Property or as a result of business or activity at the Property; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.
- (c) Property Insurance insuring the Property against loss or damage by a standard all risk policy, (excluding flood and earthquake if insurance for those risks is not available at commercially reasonable rates), in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be acceptable to Landlord.
- (d) All policies of liability insurance obtained and maintained by Tenant in accordance with this section shall name Landlord and the City as an additional insured and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Landlord.
- (e) All insurance provided under this section shall be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance from time to

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time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

(f) Tenant may use insurance proceeds to fulfill its obligations under Section 8.4(a); provided however that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Landlord. In all other events, Tenant shall pay any insurance proceeds related to the Property to Landlord.

(g) All insurance provided under this section shall be effected under policies issued by insurers of recognized responsibility licensed or permitted to do business in the State of California.

Section 8.2 Certificates. Certificates of Insurance shall be furnished by Tenant to Landlord and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Landlord. In the event Tenant does not comply with the requirements of this Article 8, Landlord may, at its option, purchase insurance coverage to protect the Landlord and the Property and Tenant shall reimburse Landlord for all reasonable sums paid by Landlord under this section within thirty (30) days after written notice is received from Landlord of amount expended. Acceptance of insurance certificates by Landlord shall not limit or eliminate the duties or responsibilities of Tenant set forth in this Lease.

Section 8.3 Waiver of Subrogation. Tenant releases Landlord and City from any claims for damage to any person or to the Property and the building and other improvements in or to the Property that are caused by or result from risks insured against under any insurance policies carried by Tenant and in force at the time of any such damage. Tenant shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the Landlord and City in connection with any damage covered by any policy.

Section 8.4 Damage or Destruction.

(a) Damage or Destruction of Improvements. In the event of damage to or destruction of the Improvements or in the event the Improvements are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion, the repair, replacement or reconstruction of improvements necessary to permit full use and occupancy of the Property and Improvements for the purposes permitted by this Lease.

(b) Waiver. Landlord and Tenant waive the provisions of any statutes that relate to termination of leases when property is destroyed and agree that such event shall be governed by the terms of this Lease.

Section 8.5 Eminent Domain. If all or part of the Property shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Lease as of the date possession is taken

Exhibit I

by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of the Property. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to be deemed to give Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Property so made unusable bears to the rented area of the Property immediately prior to the taking. No temporary taking of the Property and/or of Tenant's rights therein or under this Lease shall terminate this Lease or give Tenant any right to any abatement of rent thereunder; any award made to Tenant by reason of any such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein.

ARTICLE 9. ASSIGNMENT, SUBLETTING, SUBORDINATION AND ESTOPPEL

Section 9.1 Assignment by Tenant. Unless otherwise permitted pursuant to the DDA, Tenant agrees not to Transfer (as defined below) this Lease or any interest therein, and shall not sublet the Property or any part thereof, without the prior written consent of Landlord, and any attempt to do so without such consent being first had and obtained shall be wholly void. A Transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance or other transfer of any interest in the Lease; (ii) any sublease or occupancy or any portion of the Property by any persons other than Tenant and its employees; and (iii) any changes of ownership in the Tenant, including any transfer of fifty percent or more of the interests in Tenant or the dissolution, merger, consolidation or other reorganization of Tenant. Notwithstanding the foregoing, Tenant may assign its rights under this Lease to a Lender as security in accordance with Section 9.2.

Section 9.2 Lender Right to Cure.

(a) Tenant shall have the right at any time and from time to time to subject the Property and Improvements to one or more mortgages required for any reasonable and customary method of financing of the Improvements, provided that the Landlord has approved the financing pursuant to the DDA, and further provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interests of Landlord except as provided in this Lease.

(ii) Tenant shall give Landlord prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

Exhibit I

(b) Landlord shall give any Lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Landlord's notice of default provided pursuant to Article 10 which cure period shall be coterminous with the one provided to Tenant plus such additional time as is reasonably necessary to allow Lender to gain possession of the Property or portions thereof to allow the Lender to cure the failures or conditions.

(c) The documents evidencing Lender's loan to Tenant shall provide that any proceeds from fire or extended coverage insurance shall be used for repair or rebuilding of the leasehold improvements and not to repay part of the outstanding mortgage.

(d) The documents evidencing Lender's loan to Tenant shall contain provisions that all notices of default under the note and mortgage must be sent to Landlord and Tenant and that Landlord shall have the right to cure any default if Tenant fails to do so. Landlord shall have sixty (60) days in which to cure any default if Tenant fails to do so. Neither Landlord's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if Landlord, or Tenant in possession of the Property promptly performs all other provisions of the note and mortgage.

(e) On the recording of Lender's deed of trust or deeds of trust, Tenant shall at Tenant's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Landlord for a copy of all notices of default and all notices of sale under the deed of trust or deeds of trust as provided under California Law. Inclusion in the body of Lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

(f) Lender shall not be liable to perform Tenant's obligation under this Lease until the Lender acquires Tenant's rights by foreclosure. After acquiring Tenant's rights by foreclosure, Lender shall be liable to perform Tenant's obligations only until Lender assigns or transfers the Lease as permitted in Section 9.1. Lender shall not, however, be required to cure Tenant's defaults occurring before Lender's acquisition of Tenant's rights by foreclosure.

(g) On termination of this Lease by Landlord on Tenant's default, or on Lender's acquisition of the leasehold by foreclosure, Landlord shall enter into a new lease with Lender covering the Property covered by the terminated or foreclosed Lease if Lender (1) gives notice of request within thirty (30) days after termination or foreclosure, (2) pays all costs resulting from default and termination, and (3) remedies all defaults construed as though the Lease had not been terminated. The new lease shall be for the remainder of the term of the terminated or foreclosed Lease, effective at the date of termination or foreclosure, at the rent and on the covenants, agreement, conditions, provisions restrictions, and limitations contained in the terminated or foreclosed Lease.

Exhibit I

(h) No mortgage or deed of trust obtained by or through Tenant shall encumber the Landlord's interest in the Property or this Lease.

Section 9.3 No Release of Tenant. Consent by Landlord to any assignment or subletting by Tenant shall not relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting, unless the Landlord approves such assignment, and the assignee assumes in writing all obligations of the Tenant under this Lease and the DDA and Landlord approves the form of the written assignment. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting except as herein provided. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

Section 9.4 Assignment by Landlord. The Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Lease and in the Property and in such event such transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Landlord under this Lease. Tenant shall attorn to the purchaser or successor in interest of the Landlord.

Section 9.5 Estoppel Certificate. Within ten (10) days after request therefore by the Landlord, or if on any sale, assignment or hypothecation by the Landlord of its interest in the Property, or any part thereof, an estoppel certificate shall be required from Tenant, Tenant shall deliver in recordable form, a certificate to any Lender or purchaser, and to the Landlord, certifying (if such be the case) that this Lease is unmodified and in full force and effect; the date of Tenant's most recent payment of rent; that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; and that Tenant has no defenses or offsets outstanding, or stating those claimed by Tenant and any other information reasonably requested. Any such statement may be relied upon by Landlord and by any prospective purchaser or encumbrancer of Property.

Section 9.6 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by the Landlord, its successors or assigns, encumbering the Property, or any part thereof, or in the event of a deed-in-lieu thereof and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as the Landlord under this Lease, and Landlord's successor shall be deemed to have assumed all of the Landlord's obligations under this Lease.

ARTICLE 10. DEFAULT AND TERMINATION OF LEASE

Section 10.1 Events of Default by Tenant. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Tenant, if the default continues for

Exhibit I

sixty (60) days after written notice thereof from the Landlord; provided that if the default cannot be cured within sixty (60) days, it shall be an Event of Default if Tenant has not commenced to cure the default within sixty (60) days after written notice or if Tenant fails to diligently continue to cure the default or if such default is not cured within a reasonable time:

(a) Bankruptcy. The filing of a voluntary petition by Tenant, or the filing of an involuntary petition seeking the rehabilitation, liquidation or reorganization of Tenant or other relief under any law relating to bankruptcy, insolvency or other relief of debtors;

(b) Receivership. The appointment of a receiver, trustee, custodian or other officer with similar powers to take possession of a substantial portion of Tenant's assets or of this Lease;

(c) Insolvency or Dissolution. Tenant shall become insolvent or unable to pay its debts as they become due; or any court shall enter a decree or order directing the winding up or liquidation of Tenant or of substantially all of its assets; or Tenant shall take any action toward the dissolution or winding up of its affairs or the cessation or suspension of its business or its use of the Property;

(d) Vacation or Abandonment. Tenant's vacation or abandonment of the Property for more than sixty (60) consecutive days;

(e) Payment. Failure to pay any installment of rent when due, the failure continuing for a period of sixty (60) days;

(f) Performance. Tenant's failure to perform any of its covenants, agreements or obligations hereunder including the failure to operate the Improvements as public parking;

(g) Attachment. Attachment, execution or other judicial seizure of a substantial portion of Tenant's assets or this Lease;

(h) Default under Disposition and Development Agreement. Tenant defaults under the DDA.

(i) Default under Lender Loan Documents. Tenant defaults under any Lender's Loan Documents.

Section 10.2 Landlord's Remedies. If an Event of Default occurs, and after any notice and cure period has expired, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate and Tenant shall immediately surrender possession to the Landlord. In addition, Tenant shall owe Landlord all amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or in which the ordinary course of things would be likely to result therefrom.

Exhibit I

Section 10.3 Continuation of Lease. Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

Section 10.4 Cumulative. Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 10.5 No Waiver. No failure by the Landlord to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of rent during the continuance of any such breach shall constitute a waiver of any separate breach under this Lease. Efforts by the Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not be construed to be a waiver of Landlord's right to recover damages under this Article 10.

Section 10.6 Landlord Breach. If the Landlord materially breaches this Lease, Tenant shall give the Landlord written notice of such breach, which notice requests that the breach be cured. If the breach is not cured: (i) within sixty (60) days after receipt by the Landlord of the notice of breach or (ii) if by reason of the nature of the breach, it cannot be cured within sixty (60) days, then within a time that would be reasonable if Landlord were to proceed with diligence to remedy the breach, Tenant shall be entitled to any remedy available to it at law or equity.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Section 11.1 Notices. All notices required to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail return receipt requested, or delivered by personal delivery, or reputable overnight delivery which provides a delivery receipt, to the appropriate addresses set forth in Articles 1(e) and (f) of the Fundamental Lease Provisions, or at such other place or places as either the Landlord or Tenant may, from time to time respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served on the date of personal delivery or the refusal to accept the mailing thereof, as evidenced by the requested return receipt.

Exhibit I

Section 11.2 Conflict of Interest. No member, official or employee of the Tenant shall make any decision relating to the Lease which affects his or her personal interests or the interest of any corporation, company, partnership or association in which he or she is directly or indirectly interested.

Section 11.3 Non-Liability of Officials, Employees and Agents. The liability of Tenant for its obligations under this Lease is limited solely to Tenant's interest in the Property as the same may from time to time be encumbered. No member, official, employee or agent of the Tenant, shall be personally liable to the Tenant, or any successor in interest, in the event of any default or breach by the Tenant or for any amount that may become due to the Landlord or successor or assign on any obligation under the terms of this Lease.

Section 11.4 Successors Bound. This Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of both the Landlord and Tenant and their respective heirs, successors and legal representatives and their respective assigns, subject to the provisions hereof. Whenever in this Lease a reference is made to the Landlord, such reference shall be deemed to refer to the person in whom the interest of the Landlord shall be vested, and the Landlord shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Property. Any successor or assignee of Tenant who accepts an assignment or the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions hereof.

Section 11.5 Peaceful Enjoyment. Tenant shall, and may peacefully have, hold and enjoy the Property, provided that Tenant pays the rental and other sums herein recited to be paid by Tenant and performs all of Tenant's covenants and agreements herein contained.

Section 11.6 Time. Time is of the essence of every provision of this Lease.

Section 11.7 Severability. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or the application thereof to any person or circumstance, shall remain in full force and effect to the maximum extent possible and shall in no way be affected, impaired or invalidated.

Section 11.8 Applicable Law. This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 11.9 Holding Over. Should Tenant, or any of its successors in interest, hold over the Property, or any part thereof, after the expiration of the Term of this Lease, unless otherwise agreed to in writing, such holding over shall constitute and be construed as tenancy from month-to-month only, and rent shall be \$40,000 per month.

Section 11.10 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Property and Improvements thereon to the Landlord. The Landlord may cause any personal property that is not removed from the Property within thirty (30) days

Exhibit I

after the date of any termination of this Lease to be removed from the Property and stored at Tenant's expense, or, at Landlord's election said personal property thereafter shall belong to Landlord without the payment of any consideration, subject to the rights of any person holding a perfected security interest therein. Upon the expiration or earlier termination of this Lease, Tenant shall reassign to Landlord all of the rights of Tenant in, to or relating to the Property.

Section 11.11 Entry By Landlord. Landlord reserves and shall at any and all reasonable times after three (3) days advance written notice have the right to enter the Property during normal business hours to (a) inspect the same, (b) post notices of non-responsibility and "for lease" signs, and (c) take any action Tenant is otherwise permitted to take under this Lease.

Section 11.12 Recording. The parties shall record this Lease or a short form memorandum thereof in the Official Records of Santa Clara County. Tenant agrees to execute, acknowledge and deliver to the Landlord a quitclaim deed at the end of the Term, upon the written request of Landlord.

Section 11.13 Entire Agreement. This Lease sets forth all covenants, promises, agreements, conditions and understandings between the Landlord and Tenant concerning the Property and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant.

Section 11.14 Waiver. Landlord's waiver of any term, covenant, condition shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition. The acceptance of rent by Landlord shall not be deemed to be waiver of any prior breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such prior breach at the time it accepts such rent. Landlord's failure to exercise any right, option or privilege hereunder shall not be deemed a waiver of such right, option or privilege nor shall it relieve Tenant from its obligation to perform each day and every covenant and condition on Tenant's part to be performed nor from damages or other remedy for failure to perform the obligations of this Lease.

Section 11.15 Attorneys Fees. If either party commences an action or proceeding to determine or enforce its rights under this Lease, the prevailing party shall be entitled to recover from the losing party all expenses reasonably incurred, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

Section 11.16 Indemnification. To the fullest extent permitted by law, Tenant shall at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend and hold harmless Landlord and the City from and against all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action, charges, assessments, fines and penalties of any kind, from any cause arising out of or relating to use, maintenance or alteration of the Property under this Lease, or by Tenant, its employees, agents, contractors, invitees or licensees

Exhibit I

which is not authorized under this Lease, or as a result of the tenancy created under this Lease including without limitation: (a) the occupancy of the Property by Tenant, (b) any act, error, omission, or negligence of Tenant in, on, or about the Property, (c) Tenant's conducting of its business; (d) the construction of the Improvements or any alterations or other activities or work done, permitted, or omitted by Tenant in at or about the Property; (e) any breach or default in performance of any obligation on Tenant's part to be performed under this Lease; and (f) Tenant's performance under this Lease and the DDA.

Section 11.17 Conflict. In the event of any conflict between the terms and conditions of this Lease and the terms and conditions of the DDA, the terms and conditions of this Lease shall prevail.

Section 11.18 Non-Discrimination. The Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex marital status, national origin, ancestry, gender, disability, or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

Exhibit I

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

SUNNYVALE REDEVELOPMENT
AGENCY, a public body corporate and politic

By: _____

Its: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

TENANT:

FOURTH QUARTER PROPERTIES XLVIII,
LLC, a Georgia limited liability company

By: _____

Its: _____

Exhibit J – Blank

Exhibit K

MEMORANDUM OF OWNER PARTICIPATION AND DISPOSITION AND
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Sunnyvale Redevelopment Agency
456 West Olive Avenue
Sunnyvale, California 940881
Attention: Executive Director

No fee for recording pursuant to
Government Code Section 27383

MEMORANDUM OF OWNER PARTICIPATION AND DISPOSITION AND
DEVELOPMENT

THE SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic, herein called "Agency", acting to carry out a redevelopment plan under the Community Redevelopment Law of California, and Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company, herein called "Developer", have entered into an Owner Participation and Disposition and Development Agreement dated as of _____, 2004 (the "DDA") which affects the real property situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto (the "Property").

The DDA imposes certain obligations on Developer with respect to the Property including but not limited to the following:

1. The obligation to develop the Property in accordance with the DDA and for the uses specified in the DDA.
2. An obligation to refrain from discrimination on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the conveyance, leasing, subleasing, transferring, use, occupant, tenure or enjoyment of the Property.
3. A prohibition on transfers of the Property which will result in the Property being exempt from property tax.
4. An obligation to participate in certain downtown Sunnyvale activities.
5. An obligation to permit the Agency or the City of Sunnyvale to make use of certain plazas on the Property.

Exhibit K

6. An obligation to provide certain levels of security for the Property.
7. An obligation to obtain the consent of the Agency for certain transfers of the Property or interests in the Developer.
8. A right on the part of the Agency to purchase the portion of the Property owned by the Developer for the fair market value thereof in the event that there is an uncured default or failure by the Developer under the DDA occurring prior to the completion of the development of the Property contemplated by the DDA.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Owner Participation and Disposition and Development Agreement this ____ day of ____, 200__.

GRANTOR:

SUNNYVALE REDEVELOPMENT
AGENCY, a public body corporate and politic

By: _____
Name: _____
Title: _____

GRANTEE:

FOURTH QUARTER PROPERTIES XLVII, LLC, a
Georgia limited liability company

By: _____
Name: _____
Title: _____

Exhibit K

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit L – Not Yet Available

Exhibit M – Not Yet Available

Exhibit N – Not Yet Available

Exhibit O – Not Yet Available

Exhibit P

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

GOLDFARB & LIPMAN
1300 Clay Street, Ninth Floor
City Center Plaza
Oakland, California 94612
Attention: Lee C. Rosenthal

[Space above for Recorder's use.]

THIS DOCUMENT IS RECORDED FOR
THE BENEFIT OF THE CITY OF
SUNNYVALE, AND THE RECORDING IS
FEE-EXEMPT UNDER SECTION 27383 OF
THE GOVERNMENT CODE.

PUBLIC PARKING CITY LEASE

by and between

SUNNYVALE REDEVELOPMENT AGENCY
as Lessor

and

CITY OF SUNNYVALE,
as Lessee

Dated as of _____, 200__

Relating to

(SUNNYVALE TOWN CENTER – PUBLIC PARKING FACILITIES)

Exhibit P

PUBLIC PARKING CITY LEASE

THIS PUBLIC PARKING CITY LEASE (the "Lease"), dated as of _____, 200__, is entered into by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic, as lessor (the "Agency"), and the CITY OF SUNNYVALE, a charter city of the State of California, as lessee (the "City"):

WITNESSETH:

WHEREAS, pursuant to the Government Code of the State of California, the City may enter into leases and agreements relating to real property and equipment to be used by the City;

WHEREAS, the City Council (the "Council") has determined that it is in the best interests of the City and for the common benefit of the citizens residing in the City to provide for improvement, construction and equipping of certain public parking facilities described herein (the "Facilities");

WHEREAS, the Facilities were constructed by Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company ("Fourth Quarter") and then purchased by the City. The City then conveyed the Facilities to the Agency. The Facilities are located on the real property described in the attached Exhibit A which is owned by the Agency. The Facilities and the real property on which they are located are referred to herein as the "Site."

WHEREAS, the Agency and City desire to enter into this Lease in order to permit the operation of the Facilities by the City, and payments to the Agency by the City, the proceeds of which will be applied to finance the construction of the Facilities, as well as adjacent public streets and sidewalks;

WHEREAS, in consideration of the rent to be paid by the City to the Agency hereunder, the Agency will lease the Site to the City for public parking pursuant to Section 3.1 hereof; and

WHEREAS, the City is authorized to lease the Site as lessee and has duly authorized the execution and delivery of this Lease.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE 1
DEFINITIONS AND EXHIBITS**

Section 1.1 Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the Disposition and Development Agreement; and the additional terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number

Exhibit P

and vice versa. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"DDA" means the Disposition and Development and Owner's Participation Agreement by and between Agency and Fourth Quarter dated _____, 2004, as may be amended from time to time.

"Facilities" means the parking structures, related utilities, landscaping and such other improvements that may have been constructed on the Site in accordance with the Disposition and Development Agreement.

"Lease" means this Lease Agreement, by and between the City and the Agency, as amended and supplemented from time to time.

"Permitted Encumbrances" means as of any particular time: (1) this Lease; (2) any other encumbrance permitted under the DDA.

"Public Parking Maintenance Agreement" means the Public Parking Maintenance Agreement of even date herewith by and between the City and Fourth Quarter providing for Fourth Quarter to manage and operate the Facilities.

"Rent" means an amount equal to the Annual Payment, as such term is defined in the DDA.

"Site" means the real property, including all improvements thereon, described in Exhibit A hereto.

"Term" means the term of this Lease as established by Section 3.2 hereof.

Section 1.2 Exhibits. The following Exhibits are attached to, and by reference made a part of, this Lease:

Exhibit A: Description of the Site.

ARTICLE 2 AGREEMENT TO LEASE; TERM OF LEASE; RENT

Section 2.1 Lease. The Agency hereby leases the Site to the City and the City hereby leases the Site from the Agency upon the terms and conditions set forth herein.

Section 2.2 Term. The Term of this Lease shall commence upon execution by the City and Agency and continue until June 30, 2025, unless terminated earlier under the terms of this Lease.

Section 2.3 Rent. Subject to the provisions of Section 2.8 (regarding abatement in event of loss of use of any portion of the Site), the City agrees to pay to the Agency, its

Exhibit P

successors and assigns, as annual rent for the use and possession of the Site, the Rent. Rent shall be payable at the times set forth in Section 8.01 of the DDA (the "Rent Date").

Section 2.4 No Withholding. Notwithstanding any dispute between the Agency and the City, other than a dispute arising under Section 2.8 hereof as a result of which the City has concluded that it may not legally pay the Rent in dispute, the City shall pay all Rent when due and shall not withhold any Rent pending the final resolution of such dispute. Notwithstanding the foregoing, if, pursuant to Section 8.05 of the Disposition and Development Agreement, the Agency concludes that the Annual Payment should be suspended, then the Rent under this Lease may likewise be suspended.

Section 2.5 Fair Rental Value. The Rent shall be paid by the City in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Site during each such period for which said rental is to be paid; provided however, that such possession shall be subject to the Permitted Exceptions and the DDA. The parties hereto have agreed and determined that such total Rent to be paid hereunder does not exceed the fair rental value of the Site during the Term of this Lease. In making such determination, consideration has been given to the fair rental value of the Site (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Site and the essential public benefits therefrom which will accrue to the City and the general public.

Section 2.6 Budget and Appropriation. The City covenants to take such action as may be necessary to include all Rent due hereunder in each of its proposed annual budgets and its final adopted annual budgets through the Term of this Lease and to make the necessary appropriations for such Rent.

The obligation of the City to pay Rent hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the City or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

Section 2.7 Use and Possession. The total Rent due with respect to any Fiscal Year shall be for the use and possession of the Site for such Fiscal Year. During the Term of this Lease, the City shall be entitled to the exclusive use and possession of the Site, subject only to the Permitted Encumbrances.

Section 2.8 Abatement of Rent.

(a) In the Event of Non-delivery. To the extent described below, the amount of Rent due hereunder shall be abated during any period in which by reason of delay in the completion of the Facilities beyond the completion date there is substantial interference with the City's use and occupancy of the Facilities. The amount of such abatement shall be such that the resulting Rent does not exceed the fair rental value (as determined by an independent real estate appraiser selected by the City, who may not be an employee of the City) for the use and

Exhibit P

occupancy of the Site and the completed portions of the improvements constituting the Facilities. The City shall calculate such abatement and shall provide the Agency with a certificate setting forth such calculation and the basis therefor. Such abatement shall continue until the substantial completion of the Facilities. Notwithstanding the foregoing, the City shall remain obligated to make Rent hereunder to the extent there are proceeds of any completion or performance bonds or moneys paid to the City by the contractors or any other person as liquidated damages as a result of any defect or delay in completion of the Facilities available to pay Rent which would otherwise be abated under the section.

(b) Except to the extent that proceeds of the type described in the following paragraph are available, the amount of Rent shall be abated during any period in which there is substantial interference with the use or possession of all or a portion of the Facilities by the City by condemnation, damage, destruction or title defect. The amount of such abatement shall be such that the resulting Rent, exclusive of the amounts described in the following paragraph, does not exceed the fair rental value (as determined by one or more independent appraisers selected by the City, who are not employees of the City) for the use and possession of the portion of the Facilities for which no substantial interference has occurred. The City shall calculate such abatement and shall provide the Agency with a certificate setting forth such calculation and the basis therefor. Such abatement shall continue for the period of the substantial interference with the use or possession of the Facilities. Except as provided herein, in the event of any such interference with use or possession, this Lease shall continue in full force and effect and the City waives any right to terminate this Lease by virtue of any such interference.

Notwithstanding a substantial interference with the use or possession of all or a portion of the Site, the City shall remain obligated to pay Rent (i) in an amount not to exceed the fair rental value during each Fiscal Year for the portion of the Facilities not damaged, destroyed, interfered with or taken, as determined by an independent real estate appraiser selected by the City (who is not an employee of the City); or (ii) to the extent that moneys derived from any person as a result of any delay in the construction, reconstruction, replacement or repair of the Site, or any portion thereof, are available to pay the amount which would otherwise be abated. The City shall use its best efforts to provide sufficient funds in order to ensure completion of the reconstruction, repair, restoration, modification or improvement of the Facilities and pending such reconstruction, repair, restoration, modification or improvement of the Facilities.

Section 2.9 Net-Net-Net Lease. This Lease is and shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Rent shall be an absolute net return to the Agency, free and clear of any expenses, taxes, fees, insurance premiums, rebate payments, reserve deposits, charges, counterclaims, set-offs or other costs associated with the Site or this Lease, whatsoever.

ARTICLE 3
DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE
OF NET PROCEEDS

Section 3.1 Damage or Destruction of Facilities. In the event of any damage or destruction of the Facilities, the obligations to restore the Facilities shall be as set forth in the Public Parking Maintenance Agreement.

Section 3.2 Eminent Domain. If all or part of the Site or the Facilities shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Lease as of the date possession is taken by the condemning authority. No award for any partial or entire taking shall be apportioned, and City hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of City now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require City to be deemed to give Agency any award made to City for the taking of personal property and fixtures belonging to City and/or for the interruption of or damage to City. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Site so made unusable bears to the rented area of the Site immediately prior to the taking. No temporary taking of the Site or Facilities and/or of City's rights therein or under this Lease shall terminate this Lease or give City any right to any abatement of rent thereunder; any award made to City by reason of any such temporary taking shall belong entirely to City and Agency shall not be entitled to share therein.

ARTICLE 4
COVENANTS WITH RESPECT TO THE SITE

Section 4.1 Use of the Site. The City represents and warrants that it has an immediate essential need for all of the Site, which need is not expected to be temporary or to diminish in the foreseeable future.

Section 4.2 Quiet Enjoyment. Subject only to the Permitted Encumbrances, during the Term of this Lease the Agency shall provide the City with quiet use and enjoyment of the Site, and the City shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Agency, or any person or entity claiming under or through the Agency except as expressly set forth in this Lease. The Agency will, at the request of the City, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Agency may lawfully do so.

Section 4.3 Maintenance, Utilities, Taxes and Assessments.

(a) Maintenance; Repair and Replacement. Throughout the Term of this Lease, all repair, maintenance and replacement of the Site shall be the responsibility of Fourth Quarter as set forth in the Public Parking Maintenance Agreement.

Exhibit P

(b) Tax and Assessments; Utility Charges. Pursuant to the Public Parking Maintenance Agreement, Fourth Quarter shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges of any type or nature charged to the City or Agency or levied, assessed or charged against any portion of the Site or the respective interests or estates therein; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Fourth Quarter shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

Section 4.4 Additions, Modifications, and Improvements. The Agency or City shall, at its own expense, have the right to make additions, modifications and improvements to any portion of the Site if such additions, modifications or improvements are necessary or beneficial for the use of such portion of the Site.

Section 4.5 Liens. Except as permitted by this Lease, the City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Site, other than Permitted Encumbrances and other than the rights as herein provided. Except as expressly provided in this Article, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the City may contest such lien or claim if it desires to do so, so long as such contest will not materially, adversely affect the rights of the City to the Site or the payment of Rent hereunder.

ARTICLE 5 ASSIGNMENT, SUBLEASING AND AMENDMENT

Section 5.1 Assignment by the Agency. Agency will not assign this Lease, or any right, title or interest of the Agency in and to this Lease, to any other person, firm or corporation, except as provided in Section 8.04 of the DDA which provides for the Agency's assignment of its rights under this lease to Fourth Quarter.

Section 5.2 Assignment and Subleasing by the City. The City shall not assign this Lease. In addition, the City shall not sublease the Site or Facilities. In the event that this Lease is assigned by the City or the Site or Facilities subleased, the obligation to pay Rent and perform the other covenants of the City hereunder shall remain the obligation of the City. The foregoing shall not preclude the City from entering into the Public Parking Maintenance Agreement with Fourth Quarter.

Section 5.3 Amendments and Modifications. This Lease may be amended or any of its terms modified with the written consent of the City and the Agency.

ARTICLE 6
EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the City to pay any Rent required to be paid hereunder on the date such payments are due hereunder.

(b) Covenant Default. Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Agency; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, then no event of default shall have occurred so long as corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the City of a case in bankruptcy, or the subjection of any right or interest of the City under this Lease to any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

Section 6.2 Remedies on Default. Whenever any event of default referred to in Section 6.1 hereof shall have happened and be continuing, Agency, or its assignee, may exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE RENT OR OTHERWISE DECLARE ANY RENT NOT THEN DUE OR PAST DUE TO BE IMMEDIATELY DUE AND PAYABLE.

Section 6.3 No Remedy Exclusive. No remedy conferred herein upon or reserved to the Agency is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

Section 6.4 Agreement to Pay Attorneys Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party

Exhibit P

contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees and disbursements of such entity's attorneys and such other expenses so incurred by the nondefaulting party.

Section 6.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 7 MISCELLANEOUS

Section 7.1 Notices. All notices, certificates or other communications hereunder to the Agency and City shall be in writing and shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage pre-paid, return receipt requested, delivered personally, or sent by reputable overnight service or sent by facsimile transmission with a copy mailed by first class United States mail to the principal office of the City and the Agency as follows:

If to the City:	City of Sunnyvale 456 West Olive Avenue P.O. Box 3707 Sunnyvale, CA 94088-3707 Attn: City Manager Phone: (408) 730-7480 Fax: (408) 730-7699
If to the Agency:	Sunnyvale Redevelopment Agency 456 West Olive Avenue P.O. Box 3707 Sunnyvale, CA 94088-3707 Attention: Executive Director Phone: (408) 730-7480 Fax: (408) 730-7699

The City and the Agency, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 7.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Agency and the City and their respective successors and assigns.

Section 7.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Exhibit P

Section 7.4 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 7.6 Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 7.7 No Merger. If both the Agency's and the City's estate under this or any other lease relating to the Site or any portion thereof shall at any time by any reason become vested in one owner, this Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City so elects, the City shall continue to have and enjoy all of its rights and privileges as to the separate estates.

Section 7.8 Indemnification. To the fullest extent permitted by law, City shall at City's sole expense and with counsel reasonably acceptable to Agency, indemnify, defend and hold harmless Agency, its board members, officers, employees, agents, contractors, invitees, or licensees from and against all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action, charges, assessments, fines and penalties of any kind, from any cause arising out of or relating to use, maintenance or alteration of the Site under this Lease, or by City, its board members, officers, employees, agents, contractors, invitees or licenses which is not authorized under this Lease, or as a result of the tenancy created under this Lease including without limitation: (a) the occupancy of the Site by City; (b) any act, error, omission, or negligence of City in, on, or about the Site; (c) City's conducting of its business; (d) the construction of the Facilities or other activities or work done, permitted, or omitted by City in, at, or about the Site; (e) any breach or default in performance of any obligation on City's part to be performed under this Lease; and (f) the use, storage, presence, disposal or release of any Hazardous Materials (as such term is defined in the DDA) on or about the Site.

Section 7.9 Nondiscrimination Clause. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, gender, disability or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenor or enjoyment of the premises herein leased nor shall the City, or any person claiming under or through the City, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

Exhibit P

Section 7.10 Further Assurances and Corrective Instruments. The Agency and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

IN WITNESS WHEREOF, the Agency has caused this Lease to be executed in its name by its duly authorized officers, and the City has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

SUNNYVALE REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

ATTEST:

Secretary

APPROVED AS TO FORM

Agency Counsel

CITY OF SUNNYVALE, as Lessee

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

Exhibit P

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed under the foregoing to the City of Sunnyvale, a charter city, is hereby accepted by the undersigned officer or agent on behalf of the City Council of the City, pursuant to authority conferred by resolution of said City Council adopted on _____, 2004, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 200__

CITY OF SUNNYVALE

By: _____
Its: City Manager

Exhibit P

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, 2004, before me, _____ personally appeared _____
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, 2004, before me, _____ personally appeared
_____, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit Q

PUBLIC PARKING MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 2004 (the "Effective Date"), by and between the CITY OF SUNNYVALE, a charter city (the "City"), and FOURTH QUARTER PROPERTIES XLVIII, LLC, a Georgia limited liability company (the "Operator").

W I T N E S S E T H:

WHEREAS, the Operator and Sunnyvale Redevelopment Agency (the "Agency") have entered into that certain Owner Participation and Disposition and Development Agreement dated as of _____, _____ (the "DDA"), pursuant to which the Operator has or will construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, pursuant to the DDA, Operator has constructed certain parking structures and related improvements (the "Parking Facilities") on land owned by the Agency and more particularly described in the attached Exhibit A (the "Public Parking Parcels").

WHEREAS, Operator sold the Parking Facilities to the City, the City conveyed the Parking Facilities to the Agency and the Agency leased the property and Parking Facilities to the City pursuant to the Public Parking City Lease of even date herewith.

WHEREAS, the Agency, Sun Town Center Properties, a California Corporation, and Target corporation, a Minnesota corporation, have entered into the Operation and Reciprocal Easement Agreement dated _____, _____, which sets forth certain standards regarding the operation and maintenance of the Development (the "OREA").

WHEREAS, the Operator and the City have agreed that the Operator shall be responsible for the operation and maintenance of the Public Parking Parcels pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Public Parking Parcels. This Agreement shall affect the Public Parking Parcels.

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate ninety-nine (99) years thereafter, unless earlier terminated pursuant to the terms of this Agreement. Notwithstanding the foregoing, the term shall terminate upon the termination of the OREA. The Public Parking City Lease expires in 2025. Pursuant to the DDA, upon expiration of the Public Parking City Lease, the Agency, as owner of the Public Parking Parcels, will assume the obligations of the City under this Agreement and this Agreement will continue in full force and effect.

Exhibit Q

Section 3. Use.

a. Permitted Use. The Premises shall be used, managed and operated by the Operator hereunder to provide parking on a non-exclusive basis for members of the general public and for such other purposes as are compatible and permitted pursuant to the OREA. Notwithstanding the foregoing, the City shall be entitled to use the Parking Facilities for any reason whatsoever (and to direct the Operator to operate the Parking Facilities in accordance with its chosen use) including, subject to subsection (d) of this section, charging for parking or using the Parking Facilities for purposes other than public parking; however, in no event shall the City use the Parking Facilities for uses that would cause the Parking Facilities to violate the then applicable municipal code of the City or cause the Development to violate the then applicable code of the City with respect to the availability of parking, provided that nothing in this sentence requires the City to provide any parking that is in addition to the Parking Facilities as they exist at the Effective Date.

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Public Parking Parcels, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Public Parking Parcels, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Public Parking Parcels.

(ii) The Operator agrees not to knowingly use the Public Parking Parcels or permit anything to be done in or about the Public Parking Parcels which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Public Parking Parcels, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Public Parking Parcels, or not related to or affected by Operator's improvements or acts.

c. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Public Parking Parcels including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Public Parking Parcels in violation of any Hazardous Material Laws.

Exhibit Q

Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Public Parking Parcels. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Public Parking Parcels results in (a) contamination of the Public Parking Parcels, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Public Parking Parcels or any other property or injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify City and Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by the City and Agency (which approval may be given or withheld in their reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, Hazardous Materials means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time; any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 (j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §§ 135 et seq.; the Atomic Energy Act of 1954, 42 USC §§ 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 USC §§ 10101 et seq., California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 13000 et seq.); California Health and Safety Code §§ 25300 et seq. and their associated regulations at such time; and any additional wastes, substances or materials that at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Public Parking Parcels.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code

Exhibit Q

Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Public Parking Parcels, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Public Parking Parcels or any portion thereof.

d. Charges for Use. Operator shall not impose or permit the imposition of any charge for the use of the Public Parking Parcels and Parking Facilities without City's consent. It shall be within the discretion to determine whether or not to charge for such use and to determine the amount of any charge. In no event shall Operator be entitled to any compensation or reimbursement from the City or the Agency for the services Operator performs and obligations Operator incurs under this Agreement. If the Agency permits the imposition of a charge, the proceeds thereof shall be used first to pay debt service on the bonds issued to pay for the costs of acquisition of the Parking Facilities (the "Mello Roos Bonds"). Once the Mello Roos Bonds have been repaid, the proceeds of any charge for parking shall be used to defray the costs of operating the Parking Facilities and, if there is any, balance remaining after paying the operating costs, that balance shall be paid to the Agency. Once the Mello Roos Bonds have been repaid, the Operator may determine whether or not charges will be made for the Parking Facilities and the amount of any charges, subject to the approval of the Agency, which approval shall not be unreasonably withheld. Notwithstanding the other provisions of this section, there shall be no charges for parking in the Parking Facilities for an initial period after the completion of the Parking Facilities which initial period shall be the amount of time, as determined by nationally recognized bond counsel employed by the Agency, that the restriction on charges can remain in place, if at all, without jeopardizing the exemption from federal income taxation for the interest on the Mello Roos Bonds.

Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency, City or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Public Parking Parcels or the Parking Facilities or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to City and Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify City and Agency whether taxes have been paid.

Exhibit Q

Section 5. Repair, Maintenance and Operation. The Operator shall at its own expense, operate, repair and maintain, during the Term of this Agreement, the Public Parking Parcels and the Parking Facilities in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same (including but not limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that neither City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Public Parking Parcels and the Parking Facilities during the Term of this Agreement. The standards of operation and maintenance of the Public Parking Parcels and the Parking Facilities required under this Agreement shall include those operation and maintenance requirements applying to the Public Parking Parcels and the Parking Facilities in the OREA and the standards of the City applicable to other public parking facilities. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Public Parking Parcels and the Parking Facilities are met to the extent that they apply to the Public Parking Parcels and the Parking Facilities. In the event the Operator fails to perform the management, maintenance, repair and operation of the Public Parking Parcels and the Parking Facilities as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the OREA are met, the City shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the City shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the OREA. In such event, the Operator shall promptly upon demand reimburse the Agency for all reasonable costs and expenses incurred by the City or Agency for such management, maintenance, repair and operational activities.

Section 6. Policing. Operator shall provide adequate security and traffic control for the Public Parking Facilities as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Public Parking Parcels and is consistent with the OREA. The Operator and City do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol or traffic control. In providing for security and traffic control, Operator shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person.

Section 7. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Public Parking Parcels.

Exhibit Q

Section 8. Improvements.

a. Existing Improvements. In accordance with the DDA, the Operator shall demolish, reconstruct, repair or replace any existing improvements on the Public Parking Parcels.

b. By the Operator. In accordance with the DDA, the Operator has constructed the Parking Facilities. The Operator may, upon written approval from the City and Agency, at the Operator's expense, make any addition to or improvements to the Public Parking Parcels or Parking Facilities which are consistent with the DDA and the OREA and do not impair the utility thereof for public parking use, and place any personal property on or in the Public Parking Parcels. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies.

c. By the Agency or City. The Agency or City shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Public Parking Parcels which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Public Parking Parcels.

d. Ownership of Improvements. All Improvements constructed on the Public Parking Parcels by Operator shall be owned by the Agency and, if it is in effect, subject to the Public Parking Facilities City Lease. Any additions or alterations to the Parking Facilities shall automatically become part of the Parking Facilities.

Section 9. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Public Parking Parcels consistent with the provisions of this Agreement and the OREA, and the standards of the City applicable to other public parking facilities. Such policies, rules and regulations must be approved by the City and Agency which approval shall not be unreasonably withheld.

Section 10. Easements for Construction and Utilities. City grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Public Parking Parcels, rights or way or easements on or over the Public Parking Parcels for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 11. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

Exhibit Q

- (i) Workers' Compensation Insurance, in accordance with the law;
- (ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Public Parking Parcels or as a result of business or activity at the Public Parking Parcels; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.
- (iii) Property Insurance insuring the Public Parking Parcels against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be acceptable to the City and Agency.
- (iv) Any other insurance required the OREA or reasonably requested the Agency.
- (v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency and City.
- (vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.
- (vii) Operator may use insurance proceeds to fulfill its obligations under Section 12; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency.

Exhibit Q

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 11, Agency may, at its option, purchase insurance coverage to protect the Agency and the Public Parking Parcels and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Public Parking Parcels and the building and other improvements in or to the Public Parking Parcels that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

Section 12. Damage to the Public Parking Parcels.

a. Damage or Destruction of Improvements. In the event that the Improvements are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall, at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Parking Facilities. Notwithstanding the other provisions of this section or Section 5 above, if the Parking Facilities in the structure on Parcel ____ as described in Exhibit A hereto (the "Macy Structure") or a substantial portion of them are damaged or destroyed and there are insufficient insurance proceeds to rebuild the Macy Structure, then the City shall contribute to the Operator for the cost of rebuilding the Macy Structure an amount equal to ____ percent (____%) [total Agency additional spaces initially paid for by Agency or City, if any, divided by total number of spaces in the Macy Structure] of the reasonable rebuilding costs in excess of the available insurance proceeds, provided that no City contribution shall be required if the insurance proceeds insufficiency results from Operator's failure to obtain or maintain insurance required by this Agreement or the OREA.

b. Damage Near End of Term. Unless the OREA provides otherwise, if at any time during the last six (6) years of the Term there is damage or destruction to the Improvements and the cost to repair such damage makes any repair and restoration economically infeasible as reasonably determined by Operator, Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage.

Section 13. Assignment of Agreement.

Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be

Exhibit Q

transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the Public Parking Parcels by any persons other than Operator and its employees; and (iii) any changes of ownership in the Operator, including any transfer of fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign its rights under this Agreement to (i) a Lender (as defined below) as security in accordance with Section 20, and (ii) to an entity that is purchasing all or a substantial portion of the retail improvements in the Development, if such assignment is permitted under the DDA or approved by the City and Agency.

Section 14. Eminent Domain.

If all or part of the Public Parking Parcels shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair use of the Public Parking Parcels in accordance with this Agreement. No award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Public Parking Parcels and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 15. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Public Parking Parcels and Parking Facilities in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Public Parking Parcels and Improvements caused by casualty or by a taking as a result of eminent domain proceedings.

Section 16. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Public Parking Parcels free and clear of all mechanics' and materialmen's liens in connection therewith. The City or Agency shall have the right to post or keep posted on the Public Parking Parcels, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Public Parking Parcels by Operator. If any such lien is filed, the City or Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be

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necessary to remove such lien. Operator shall reimburse City or Agency for all reasonable sums paid by City or Agency under this section within thirty (30) days after written notice is received of the amount expended.

Section 17. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 18. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency	City of Sunnyvale P.O. Box 3707 456 West Olive Avenue Sunnyvale, California 94088-3707 Attention: Executive Director
Operator	Fourth Quarter Properties XLVIII, LLC 1300 Parkwood Circle, Suite 430 Atlanta, Georgia 30339 Attention: Bill Brown Telephone: (770) 801-9886 Facsimile: (770) 801-8898

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 19. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 20. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the City to the Operator, or (b) the Operator shall abandon or vacate the Public Parking Parcels, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the City, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

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If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the City shall have the right, at its option, without any further demand or notice:

- (i) to terminate this Agreement and, in which case this Agreement shall terminate, and the Operator shall have no further rights or claim hereunder; or
- (ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the City terminates this Agreement as hereinabove provided, the City shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the City are in addition to and not exclusive of any other remedy of the City. Upon termination, the Operator shall not hinder the City or its designee in taking over operation of the Public Parking Parcels and Parking Facilities.

Section 21. Financing.

a. Operator shall have the right at any time and from time to time to assign this Agreement to the holder of one or more mortgages required for any reasonable and customary method of construction or permanent financing of the Development without the City's consent, provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of City except as provided in this Agreement.

(ii) Operator shall give City prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

b. City shall give any lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice of default provided pursuant to Section 20 which cure period shall be coterminous with the one provided to Operator plus such additional time as is reasonably necessary to allow the lender to gain possession of the Operator's rights under this Agreement.

c. The documents evidencing the lender's loan to Operator shall provide that any proceeds from fire or extended coverage insurance for the Parking Facilities shall be used for repair or rebuilding of the Parking Facilities and not to repay part of the outstanding mortgage.

Exhibit Q

d. The documents evidencing lender's loan to Operator shall contain provisions that all notices of default under the note and mortgage must be sent to City and Operator and that City shall have the right to cure any default if Operator fails to do so. City shall have sixty (60) days in which to cure any default if Operator fails to do so. Neither City's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if City, or Operator in possession of the Public Parking Parcels promptly performs all other provisions of the note and mortgage.

e. On the recording of lender's deed of trust or deeds of trust, Operator shall at Operator's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by City for a copy of all notices of default and all notices of sale under the deed of trust as provided under California Law. Inclusion in the body of lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

f. Lender shall not be liable to perform Operator's obligations under this Agreement until the lender acquires Operator's rights by foreclosure. After acquiring Operator's rights by foreclosure, lender shall be liable to perform Operator's obligations only until lender assigns or transfers the Agreement as permitted in Section 13. Lender shall not, however be required to cure Operator's defaults occurring before lender's acquisition of Operator's rights by foreclosure.

Section 22. No Release of Operator. Consent by Agency to any assignment or subletting by Operator shall not relieve Operator of any obligation to be performed by Operator under this Agreement, whether occurring before or after such consent or assignment, unless the Agency approves such assignment, and the assignee assumes in writing all obligations of the Operator under this Agreement and the DDA and Agency approves the form of the written assignment. The consent by Agency to any assignment shall not relieve Operator from the obligation to obtain Agency's express written consent to any other assignment or except as herein provided. The acceptance of payment by Agency from any other person shall not be deemed to be a waiver by Agency of any provision of this Agreement or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

Section 23. Assignment by City. The City shall not have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement and in the Public Parking Parcels without the consent of Operator.

Section 24. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, or ancestry, in the leasing,

Exhibit Q

subleasing, transferring, use, or enjoyment of the Public Parking Parcels herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Public Parking Parcels herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 25. Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Public Parking Parcels or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Public Parking Parcels or any part thereof during the Term of this Agreement except for the willful misconduct or the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency and the Public Parking Parcels harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Public Parking Parcels during the Term of this Agreement.

The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the Public Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Parking Parcels to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Operator.

Section 26. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Public Parking Parcels in any manner or for any purposes other than as herein set forth;
- b. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Public Parking Parcels;

Exhibit Q

- c. Abandon the Public Parking Parcels during the Term of this Agreement;
- d. Knowingly use or occupy, or knowingly permit the Public Parking Parcels or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Public Parking Parcels in any manner known to constitute or give rise to a nuisance of any kind;
- e. Make, authorize or permit any material modifications or alterations to the Public Parking Parcels except as expressly authorized by this Agreement;
- f. Do anything inconsistent with, or that will cause a default under the OREA; or
- g. Enter into or amend any contract or agreement affecting the Public Parking Parcels that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 27. Attorneys' Fees and Court Costs. In the event that either the City or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 28. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the City and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the City and the Operator.

Section 29. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Exhibit Q

Section 31. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Public Parking Parcels, and (ii) shall not make Operator an agent for the City or Agency.

Section 32. Estoppel Certificate. Within ten (10) days after delivery of a written request from the Agency to the Operator, the Operator shall execute and deliver to the Agency an estoppel certificate certifying as to such facts with regard to this Agreement and the Public Parking Parcels as the Agency may reasonably request from time to time.

Section 33. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the OREA, the terms of this Agreement shall prevail.

Exhibit Q

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF SUNNYVALE

By: _____
Name: _____
Its: _____

ATTEST:

City Clerk

FOURTH QUARTER PROPERTIES XLVIII, LLC

By: _____
Name: _____
Its: _____

Exhibit R

INTERIM MATHILDA MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 2004 (the "Effective Date"), by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and FOURTH QUARTER PROPERTIES XLVIII, LLC, a Georgia limited liability company (the "Operator").

W I T N E S S E T H:

WHEREAS, the Operator and the Agency have entered into that certain Owner Participation and Disposition and Development Agreement dated as of _____, 2004 (the "DDA"), pursuant to which the Operator shall construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, prior to the completion of the Development, the DDA contemplates that the Operator will operate certain parking facilities that are owned by the Agency (the "Improvements") and located on the Property more particularly described in Exhibit A attached hereto (the "Property").

WHEREAS, the Operator and the Agency have agreed that the Operator shall be responsible for the operation and maintenance of the Property pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Property. This Agreement shall affect the Property.

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate upon the Agency and Operator entering into the Public Parking Construction Lease or the date ten (10) years following the Effective Date, whichever first occurs.

Section 3. Use.

a. Permitted Uses. The Property shall be used only for public parking.

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Property, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Property, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Property.

(ii) The Operator agrees not to knowingly use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute,

Exhibit R

ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Property, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Property, or not related to or affected by Operator's improvements or acts.

c. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Property including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Property in violation of any Hazardous Material Laws.

Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Property. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Property results in (a) contamination of the Property, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Property or any other property or injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Agency (which approval may be given or withheld in Agency's reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, Hazardous Materials means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time; any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 (j) of the California Health

Exhibit R

and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §§ 135 et seq.; the Atomic Energy Act of 1954, 42 USC §§ 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 USC §§ 10101 et seq., California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 13000 et seq.); California Health and Safety Code §§ 25300 et seq. and their associated regulations at such time; and any additional wastes, substances or materials that at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

d. No Charge for Use. Operator shall not impose or permit the imposition of any charge for the use of the Property and Improvements without Agency's consent.

Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Property or the Improvements or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other

Exhibit R

appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify Agency whether taxes have been paid.

Section 5. Repair, Maintenance and Operation. The Operator shall at its own expense, operate, repair and maintain, during the Term of this Agreement, the Property in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating the same. Such costs shall include but not be limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the existing Reciprocal Easement Agreement governing the Property dated as of March 1, 1978 which is recorded in the Official Records of Santa Clara County as follows: original Reciprocal Easement Agreement recorded on July 27, 1978 as Document No. 6089790; Amendment No. 1 recorded on September 5, 1980 as Document No. 6826488; Amendment No. 2 recorded on July 26, 1995 as Document No. 12962762; and Amendment No. 3 recorded on May 25, 2000 as Document No. 15261167 (the "REA"), all utilities, and all public charges, taxes and assessments of any nature whatsoever. Neither the City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation or maintenance of the Property during the Term of this Agreement. The standards of operation and maintenance of the Property required under this Agreement shall include those operation and maintenance requirements applying to the Property in the REA and the standards of the City applicable to other public streets, sidewalks and plazas. Operator shall at all times ensure that the provisions of the REA relating to the operation and maintenance of the Property are met to the extent that they apply to the Property. In the event the Operator fails to perform the management, maintenance, repair and operation of the Property as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the REA are met, the Agency shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Agency shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the REA. In such event, the Operator shall promptly upon demand reimburse the Agency for all reasonable costs and expenses incurred by the Agency for such management, maintenance, repair and operational activities.

Section 6. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Property.

Section 7. Improvements.

a. Existing Improvements. As of the Effective Date, the Improvements are existing on the Property. The Improvements include parking structures which Operator may demolish during the Term.

Exhibit R

b. Additional Improvements. The Operator shall have the right during the Term of this Agreement, at its own expense and with the approval of the Agency, to make or permit to be made, any addition to or improvements to the Property which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Property.

c. Ownership of Improvements. All Improvements on the Property by Operator shall be owned by the Agency. Any additions or alterations to the Improvements shall automatically become part of the Improvements.

Section 8. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Property consistent with the provisions of this Agreement, the Reciprocal Easement Agreement ("REA") applicable to the Property, and the standards of the City applicable to other public parking facilities as may be necessary and approved by the Agency. Such policies, rules and regulations must be approved by the Agency which approval shall not be unreasonably withheld.

Section 9. Easements for Construction and Utilities. Agency grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Property, rights or way or easements on or over the Property for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 10. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

(i) Workers' Compensation Insurance, in accordance with the law;

(ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Property or as a result of business or activity at the Property; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.

(iii) Property Insurance insuring the Property against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be acceptable to the Agency.

Exhibit R

(iv) Any other insurance required by the REA.

(v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency.

(vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.

(vii) Operator may use insurance proceeds to fulfill its obligations under Section 11; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency. In all other events, Operator shall be insurance proceeds related to the Property to the Agency.

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 10, Agency may, at its option, purchase insurance coverage to protect the Agency and the Property and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Property and the building and other improvements in or to the Property that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

Section 11. Damage to the Property.

In the event that the Improvements are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall not have an obligation to repair or replace the Improvements unless required under the REA.

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Section 12. Assignment of Agreement.

Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the Property by any persons other than transfer or fifty percent or more of the interests in Operator including the dissolution, merger, consolidation or other reorganization of Operator.

Section 13. Eminent Domain.

If all or part of the Property shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Operator's use of the Property. No award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Property and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 14. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Property and Improvements in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Property and Improvements caused by casualty or by a taking as a result of eminent domain proceedings.

Section 15. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Property free and clear of all mechanics' and materialmen's liens in connection therewith. The Agency shall have the right to post or keep posted on the Property, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Property by Operator. If any such lien is filed, the Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be necessary to remove such lien. Operator shall reimburse Agency for all

Exhibit R

reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of the amount expended.

Section 16. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 17. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency	Sunnyvale Redevelopment Agency 456 West Olive Avenue Sunnyvale, California 94086 Attention: Director of Finance and Executive Director of the Agency
Operator	Fourth Quarter Properties XLVIII, LLC 1300 Parkwood Circle, Suite 430 Atlanta, Georgia 30339 Attn: Bill Brown

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 18. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 19. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Operator, or (b) the Operator shall abandon or vacate the Property, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such

Exhibit R

correction to completion, then the Agency shall have the right, at its option, without any further demand or notice:

(i) to terminate this Agreement, in which case the Operator shall have no further rights or claims hereunder; or

(ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the Agency terminates this Agreement as hereinabove provided, the Agency shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the Agency are in addition to and not exclusive of any other remedy of the Agency. Any such re-entry as provided in this section above shall be allowed by the Operator without hindrance and the Agency shall not be liable in damages for such re-entry or be guilty of trespass.

Section 20. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability, or sexual orientation, in the leasing, subleasing, transferring, use, or enjoyment of the Property herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Property herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 21. Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Property or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Property or any part thereof during the Term of this Agreement except for the willful misconduct and the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency and the Property harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Property during the Term of this Agreement.

Exhibit R

Section 22. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Property in any manner or for any purposes other than as herein set forth;
- b. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Property;
- c. Abandon the Property during the Term of this Agreement;
- d. Knowingly use or occupy, or knowingly permit the Property or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Property in any manner known to constitute or give rise to a nuisance of any kind;
- e. Make, authorize or permit any material modifications or alterations to the Property except as expressly authorized by this Agreement;
- f. Do anything inconsistent with, or that will cause a default under the Operation Easement Agreement; or
- g. Enter into or amend any contract or agreement affecting the Property that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 23. Attorneys' Fees and Court Costs. In the event that either the Agency or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 24. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the Agency and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Operator.

Section 25. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the

Exhibit R

remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 26. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 27. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Property, and (ii) shall not make Operator an agent for the City or Agency.

Section 28. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the REA, the terms of this Agreement shall prevail.

Exhibit R

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE SUNNYVALE REDEVELOPMENT AGENCY

By: _____
Name: _____
Its: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

FOURTH QUARTER PROPERTIES XLVIII, LLC

By: _____
Name: _____
Its: _____

Exhibit S
Fees and Charges Estimates for Fiscal Year 2003-2004
(Project Description of 275,000 Office; 1,000,000 Retail; 292 Housing Units)

Application Fees (Planning)	Rate	Estimated Fee
Tentative Map Application Fee	\$3,000 per map, flat rate	\$ 3,000
Tentative Map Application Fee	\$200 x lots	\$ 60,000
Public Art Review Application Fee	\$1,600 flat rate	\$ 1,600
Below Market Rate Units	12.5%	
SDP Plan Review	\$1,200 per plan	\$ 2,400
Master Sign	\$550	\$ 550
	Subtotal	\$ 71,150
Impact Fees		
Park In Lieu	\$4,851.50 x units	\$ 1,455,450
Citywide Traffic Impact Fee (assumed in subtotal)	Building Permits July1, 2004-June 30, 2005	\$ 1,637,740
Citywide Traffic Impact Fee	After July 1,2005	\$ 2,072,849
School Fee Residential SSD and FUSD	\$2.05	\$ 676,500
School Fee Commercial Only FUSD Charges	\$0.33	\$ 576,661
	Subtotal	\$ 4,346,351
Building Permit Fees		
Building Plan Check	Approximately 1.8% of construction value	\$ 1,620,000
<i>Construction Tax</i>	<i>.54% of valuation</i>	
<i>Plan Check</i>	<i>70% of building permit fee</i>	
<i>Energy</i>	<i>10% of building permit fee</i>	
<i>Grading</i>	<i>2% building permit fee</i>	
<i>Plumbing</i>	<i>\$. 12 x linear feet</i>	
<i>Mechanical</i>	<i>\$. 12 x linear feet</i>	
<i>Electrical</i>	<i>\$. 12 x linear feet</i>	
<i>Fire Prevention</i>	<i>70% of building permit fee</i>	
General Plan Maintenance Fee	.5% construction valuation	\$ 425,000
	Subtotal	\$ 2,070,000
Construction Costs Other		
Public Art Required in Project	1% construction valuation	
PW Fees		
Group 1		
Application, Plan Check, Permit, Inspection Fees	Rate	
Final Map Base Rate	\$1,127.00	\$1,127
Final Map per lot	\$36.00	\$10,800
Improvement Plan Check + Permit + Inspection	7%	\$175,000
	Subtotal	\$ 186,927
Group 2		
Development Impact Fees	Rate	
Sanitary Sewer Connection (Residential)	\$1,434.00	\$ 430,200
Sanitary Sewer Connection (Commercial)	\$2,309.00	\$ 654,841
Water Main Frontage	\$40.00	\$ 175,920
Water Connection (Residential)	\$297.00	\$ 89,100
Water Connection (Commercial)	\$297.00	\$ 171,268
Storm Drain Connection (Mixed Use)	Scaled Formula (avg. 4900/acre)	\$ 151,448
Street Trees	\$210.00	\$ 25,200
Street light	\$25.00	\$ 109,950
Fire Hydrant	\$8.10	\$ 35,624
	Subtotal	\$ 1,843,551
Total (assumes 25% Traffic Discount)		\$ 8,517,980

Exhibit T

EXHIBIT T. - Page 1 of 2

Tax Increment Projections
Sunnyvale Town Center
Sunnyvale Redevelopment Agency

NO CAP - WITH PARKING D IN BASE A.V

WORKING DRAFT

ILLUSTRATIVE PRO FORMA

											1	2	3	4	5	6	7	8	9	10	11			
Fiscal Year	Plan Year	Adjusted Secured	% Sec Growth	Town Center Est. Secured A. V. (annual) (1)	Total Secured	Adjusted Unsecured	% Unsec Growth	New Value Added	Total Unsecured	Total Project Value	Increment Over Base (2) \$77,963,117 82,735,000	Gross Increment Revenue at 1%	Less County Admin Fee -2%	Total Tax Increment Revenue	Housing Set Aside (3) -20%	59.7% Tier 1 Tax Sharing (3) -20%	43.6% Tier 2 Tax Sharing -16.8%	43.6% Tier 3 Tax Sharing -11.2%	Statutory Pass Through	Revenue Growth Over 4,925,465	Revenue Growth at 80%	Basic Aid School Share at -40.34%	Net Tax Increment Revenue	
2002/03	27	0	2%	0	0	0	0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
2003/04	28	77,963,117	2%	0	77,963,117	0	0%	0	0	77,963,117	0	0	0	0	0	0	0	0	0	0	0	0		
2004/05	29	79,522,379	2%	0	79,522,379	0	0%	0	0	79,522,379	1,559,262	15,593	(312)	15,281	0	0	0	0	0	0	0	15,281		
2005/06	30	0	2%	117,462,526	117,462,526	0	0%	0	0	117,462,526	39,499,409	394,994	(7,900)	387,094	0	0	0	0	0	0	0	387,094		
2006/07	31	119,811,777	2%	5,795,212	125,606,989	0	0%	0	0	125,606,989	47,643,872	476,438	(9,529)	466,910	0	0	0	0	0	0	0	466,910		
2007/08	32	128,119,128	2%	260,925,040	389,044,168	0	0%	0	0	389,044,168	306,309,168	3,063,092	(61,262)	3,001,830	0	0	0	0	0	0	0	3,001,830		
2008/09	33	396,825,052	2%	118,490,726	515,315,778	0	0%	0	0	515,315,778	432,580,778	4,325,808	(86,516)	4,239,292	0	0	0	0	0	0	0	0		
2009/10	34	525,622,094	2%	5,849,106	531,471,200	0	0%	0	0	531,471,200	448,736,200	4,487,362	(89,747)	4,397,615	0	0	0	0	0	0	0	4,397,615		
2010/11	35	542,100,624	2%	0	542,100,624	0	0%	0	0	542,100,624	459,365,624	4,593,656	(91,873)	4,501,783	0	0	0	0	0	0	0	4,501,783		
2011/12	36	552,942,636	2%	0	552,942,636	0	0%	0	0	552,942,636	470,207,636	4,702,076	(94,042)	4,608,035	0	0	0	0	0	0	0	4,608,035		
2012/13	37	564,001,489	2%	0	564,001,489	0	0%	0	0	564,001,489	481,266,489	4,812,665	(96,253)	4,716,412	0	0	0	0	0	0	0	4,716,412		
2013/14	38	575,281,519	2%	0	575,281,519	0	0%	0	0	575,281,519	492,546,519	4,925,465	(98,509)	4,826,956	0	0	0	0	0	0	0	4,826,956		
2014/15	39	586,787,149	2%	0	586,787,149	0	0%	0	0	586,787,149	504,052,149	5,040,521	(100,810)	4,939,711	0	(13,728)	0	0	0	115,056	92,045	(37,134)	4,888,849	
2015/16	40	598,522,892	2%	0	598,522,892	0	0%	0	0	598,522,892	515,787,892	5,157,879	(103,158)	5,054,721	(1,031,576)	(27,730)	0	0	0	(27,730)	232,414	185,931	(75,011)	3,920,405
2016/17	41	610,493,350	2%	0	610,493,350	0	0%	0	0	610,493,350	527,758,350	5,277,584	(105,552)	5,172,032	(1,055,517)	(42,012)	0	0	0	(42,012)	352,118	281,695	(113,645)	3,960,858
2017/18	42	622,703,217	2%	0	622,703,217	0	0%	0	0	622,703,217	539,968,217	5,399,682	(107,994)	5,291,689	(1,079,936)	(56,581)	0	0	0	(56,581)	474,217	379,374	(153,052)	4,002,120
2018/19	43	635,157,281	2%	0	635,157,281	0	0%	0	0	635,157,281	552,422,281	5,524,223	(110,484)	5,413,738	(1,104,845)	(71,440)	0	0	0	(71,440)	598,758	479,006	(193,247)	4,044,207
2019/20	44	647,860,427	2%	0	647,860,427	0	0%	0	0	647,860,427	565,125,427	5,651,254	(113,025)	5,538,229	(1,130,251)	(86,596)	0	0	0	(86,596)	725,789	580,631	(234,245)	4,087,136
2020/21	45	660,817,636	2%	0	660,817,636	0	0%	0	0	660,817,636	578,082,636	5,780,826	(115,617)	5,665,210	(1,156,165)	(102,056)	0	0	0	(102,056)	855,361	684,289	(276,064)	4,130,924
2021/22	46	674,033,988	2%	0	674,033,988	0	0%	0	0	674,033,988	591,298,988	5,912,990	(118,260)	5,794,730	(1,182,598)	(117,825)	0	0	0	(117,825)	987,525	790,020	(318,720)	4,175,588
2022/23	47	687,514,668	2%	0	687,514,668	0	0%	0	0	687,514,668	604,779,668	6,047,797	(120,956)	5,926,841	(1,209,559)	(133,909)	0	0	0	(133,909)	1,122,331	897,865	(362,228)	4,221,144
2023/24	48	701,264,962	2%	0	701,264,962	0	0%	0	0	701,264,962	618,529,962	6,185,300	(123,706)	6,061,594	(1,237,060)	(150,315)	(10,064)	0	0	(160,380)	1,259,834	1,007,868	(406,066)	4,257,548
2024/25	49	715,290,261	2%	0	715,290,261	0	0%	0	0	715,290,261	632,555,261	6,325,553	(126,511)	6,199,042	(1,265,111)	(167,049)	(20,330)	0	0	(187,379)	1,400,087	1,120,070	(451,872)	4,294,679
2025/26	50	729,596,066	2%	0	729,596,066	0	0%	0	0	729,596,066	646,861,066	6,468,611	(129,372)	6,339,238	(1,293,722)	(184,118)	(30,801)	0	0	(214,919)	1,543,145	1,234,516	(498,044)	4,332,554
TOTAL (5)					508,522,611									98,557,981	(12,466,339)	(1,153,361)	(61,195)	0	(1,214,555)	9,666,637	7,733,309	(3,119,867)	81,477,219	
NET PRESENT VALUE - @ Disc. As of 2004/2005																							40,800,000	

Assumptions:

(1) Tax increment to be received by developer on an as-available basis, beginning when project is completed - not withstanding that some increment may occur earlier as land is transferred and partial improvements made.

(2) Based on 2003-04 assessed value, with **Parking D**, escalated as permitted by Prop. 13, at 2% per year until 2006-07 Base Year. Initial annual payment based on unescalated base assessed value.

(3) Assumes that the required Housing Set-Aside is deferred until the Agency has repaid its 1977 City loan, as permitted per the provisions of CRL Section 33334.6, which allows existing Agency obligations to have priority on the call of tax increment revenues - unless Agency incurs additional debt, per Agency counsel.

The repayment of the 1977 City loan and the triggering of the Housing Set-Aside is projected to occur in 2015 per E.J. De La Rosa schedule OR year of bond issuance if Bonds are assumed. The above estimates further assume that any unpaid/deferred Housing Set-Aside be paid from the remainder of the Redevelopment Project Area, and/or from tax increment after the end of the Plan.

(4) Tier 1 tax sharing would be triggered, once the \$118 million TI cap (area-wide) is reached and assuming the cap is amended. This is projected to occur in 2013 per E.J. De La Rosa schedule and Tier 2 in 2023.

Assumes that the tax increment revenues are passed through to the City's General Fund for Agency repayment of the City loans and that this structure would not constitute a debt obligation to the Agency (in which case, the pass-thrus to the taxing entities would need to begin earlier with AB 211 ordinance), per Agency counsel.

(5) Redevelopment Plan is assumed to be extended to 2026. Possible valuations upward or downward as commercial and residential resales have NOT been included in above projections due to unpredictability of resale timing and valuation at time of sale.

Developer is instructed to independently confirm these assumptions with his/her own redevelopment experts.

CAVEATS TO TAX INCREMENT PROJECTIONS:

1) THIS TABLE IS PART OF AN OVERALL ANALYSIS PREPARED BY KEYSER MARSTON ASSOCIATES FOR THE CITY OF SUNNYVALE REDEVELOPMENT AGENCY.

2) ITS PURPOSE IS TO PROVIDE THE AGENCY WITH AN ILLUSTRATIVE TAX INCREMENT PROJECTION, WHICH WILL LIKELY BE CHANGED/REVISED AS THE PROJECT IS REFINED AND FINALIZED. IT SHOULD ALSO BE RECOGNIZED THAT THE T.I. PROJECTIONS FOR THE TOWN CENTER IS AN ITERATIVE PROCESS AS THEY ARE DEPENDENT UPON THE ASSUMPTIONS AND PROJECTIONS BEING MADE BY DE LA ROSA & CO. FOR THE LARGER PROJECT AREA. THUS, THE ILLUSTRATIVE PROJECTIONS HEREIN ARE SUBJECT TO POTENTIAL CHANGES TO REDEVELOPMENT FUNDING BY THE STATE OF CALIFORNIA AND OTHER CIRCUMSTANCES WHICH COULD AFFECT THE AMOUNT OF TAX INCREMENT THAT MIGHT ULTIMATELY BE REALIZED. NEITHER KMA, E.J. DE LA ROSA, NOR THE SUNNYVALE REDEVELOPMENT AGENCY OR THE CITY MAKES ANY WARRANTY THAT THE ABOVE PROJECTIONS WILL ACTUALLY MATERIALIZATE.

3) ACTUAL TAXABLE VALUES, TAX INCREMENT, AND THE TIMING OF TAX INCREMENT WILL VARY FROM THE AMOUNTS CONTAINED IN THIS PROJECTION. KMA, E.J. DE LA ROSA, AND THE SUNNYVALE REDEVELOPMENT AGENCY MAKE NO REPRESENTATIONS REGARDING THE AVAILABILITY OF THE PROJECTED FUNDS TO SUPPORT NEW AGENCY INDEBTEDNESS.

4) THE DEVELOPER HAS BEEN INSTRUCTED TO INDEPENDENTLY PREPARE OR ENGAGE A CONSULTANT TO PREPARE ITS OWN PROJECTIONS OF TAX INCREMENT.

Exhibit T

EXHIBIT T. - Page 2 of 2

Tax Increment Projections - with Cap @
Sunnyvale Town Center
Sunnyvale Redevelopment Agency

\$4,000,000

WORKING DRAFT
ILLUSTRATIVE PROJECTIONS

Fiscal Year	Net TI	Running Average TI			Developer Share			City Share		
		Running Total	Years	Running Avg TI	Base	50% of Excess	Total Dvlpr	50% of Excess	Remainder	Total Cty
2002/03										
2003/04	0									
2004/05	15,281			NA	15,281	0	0	0	0	0
2005/06	387,094			NA	387,094	0	0	0	0	0
2006/07	466,910			NA	466,910	0	0	0	0	0
2007/08	3,001,830	3,001,830	1	3,001,830	3,001,830	0	3,871,115	0	0	0
2008/09	4,239,292	7,241,121	2	3,620,561	4,239,292	0	4,239,292	0	0	0
2009/10	4,397,615	11,638,736	3	3,879,579	4,397,615	0	4,397,615	0	0	0
2010/11	4,501,783	16,140,519	4	4,035,130	4,000,000	250,892	4,250,892	250,892	0	250,892
2011/12	4,608,035	20,748,554	5	4,149,711	4,000,000	304,017	4,304,017	304,017	0	304,017
2012/13	4,716,412	25,464,966	6	4,244,161	4,000,000	358,206	4,358,206	358,206	0	358,206
2013/14	4,826,956	30,291,922	7	4,327,417	4,000,000	413,478	4,413,478	413,478	0	413,478
2014/15	4,888,849	35,180,771	8	4,397,596	4,000,000	444,425	4,444,425	444,425	0	444,425
2015/16	3,920,405	39,101,176	9	4,344,575	3,920,405	0	3,920,405	0	0	0
2016/17	3,960,858	43,062,034	10	4,306,203	3,960,858	0	3,960,858	0	0	0
2017/18	4,002,120	47,064,154	11	4,278,559	4,000,000	1,060	4,001,060	1,060	0	1,060
2018/19	4,044,207	51,108,361	12	4,259,030	4,000,000	22,104	4,022,104	22,104	0	22,104
2019/20	4,087,136	55,195,498	13	4,245,808	4,000,000	43,568	4,043,568	43,568	0	43,568
2020/21	4,130,924	59,326,422	14	4,237,602	4,000,000	65,462	4,065,462	65,462	0	65,462
2021/22	4,175,588	63,502,009	15	4,233,467	4,000,000	87,794	4,087,794	87,794	0	87,794
2022/23	4,221,144	67,723,153	16	4,232,697	4,000,000	110,572	4,110,572	110,572	0	110,572
2023/24	4,257,548	71,980,701	17	4,234,159	4,000,000	128,774	4,128,774	128,774	0	128,774
2024/25	4,294,679	76,275,381	18	4,237,521	4,000,000	147,340	4,147,340	147,340	0	147,340
2025/26	4,332,554	80,607,934	19	4,242,523	4,000,000	166,277	4,166,277	166,277	0	166,277
	81,477,219			78,508,129	76,389,284	2,543,968	78,933,252	2,543,968	0	2,543,968
NPV @ 6.5%							39,500,000			1,300,000

CAVEATS TO TAX INCREMENT PROJECTIONS:

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- 3) ACTUAL TAXABLE VALUES, TAX INCREMENT, AND THE TIMING OF TAX INCREMENT WILL VARY FROM THE AMOUNTS CONTAINED IN THIS PROJECTION. FOR EXAMPLE, THE REDEVELOPMENT PLAN IS ASSUMED TO BE EXTENDED TO 2026; VALUATIONS WILL ALSO MOVE UPWARD OR DOWNWARD AS COMMERCIAL AND RESIDENTIAL RESALES HAVE NOT BEEN INCLUDED IN THIS PROJECTION DUE TO THE UNPREDICTABILITY OF TIMING AND VALUES AT TIME OF SALE. KMA, E.J. DE LA ROSA, AND THE REDEVELOPMENT AGENCY MAKE NO REPRESENTATIONS REGARDING THE AVAILABILITY OF THE PROJECTED FUNDS TO SUPPORT NEW AGENCY INDEBTEDNESS.
- 4) THE DEVELOPER HAS BEEN INSTRUCTED TO INDEPENDENTLY PREPARE OR ENGAGE A CONSULTANT TO PREPARE ITS OWN PROJECTIONS OF TAX INCREMENT.